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IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge
Case No. 2008-CP-23-5739
Appellate Case No.: 2017-000690

RECEIVED
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SC Court of Appeals

Andrew P. (Andy) Ballard, Respondent,

v.

Tim Roberson, Rick Thoennes, Rick Thoennes III, and Warpath Development, Inc., Defendants,

Of whom Tim Roberson is Appellant.

**RECORD ON APPEAL
VOLUME I**

Joshua L. Howard (SC Bar No.: 70260)
WOMBLE BOND DICKINSON (US), LLP
550 South Main Street, Suite 400
Greenville, SC 29601
864-255- 5406
Attorneys for Appellant, Tim Roberson

Other Counsel of Record:

Wallace K. Lightsey
William M. Wilson, III
Wade Stackhouse Kolb, III
Amos Workman
WYCHE, P.A.
44 East Camperdown Way
Greenville, SC 29601
Tele: 864-242-8200
Fax: 864-235-8900
Email: wlightsey@wyche.com

Attorneys for Respondent Andrew P. (Andy) Ballard

James W. Fayssoux, Sr., Esq.
209 E. Washington Street
Greenville, SC 29601
**Attorneys for Rick
Thoennes and Rick Thoennes, III**

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2008 MAY -4 AM 9:22

FOR THE THIRTEENTH JUDICIAL CIRCUIT

FILED CLERK OF COURT
PAUL B. WICKENS
GREENVILLE, SC

Andrew P. (Andy) Ballard,

Case Number: 2008-CP-23-5739

Plaintiff,

ORDER

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

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Defendants.

This case was tried on March 15, 16, and 17, 2010. This suit involves a corporation, the defendant Warpath Development, Inc. ("Warpath"). The plaintiff Andrew P. Ballard ("Ballard") is a minority shareholder in Warpath; the individual defendants are the controlling shareholders. Ballard's amended complaint alleges breach and anticipatory breach of a Stock Purchase Agreement, breach of the covenant of good faith and fair dealing, breach of Warpath's Articles of Incorporation, breaches of the individual defendants' fiduciary duties, and oppression of the minority shareholder by the defendants. The defendants brought counterclaims against Ballard alleging breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation, and violation of S.C. Code § 35-1-501 in connection with the sale of securities.

The case was tried to a jury. As set out below, after the presentation of the plaintiff's case and the cross examination of the defendants' first witness, the defendant Tim Roberson ("Roberson"), the defendants dismissed their counterclaims with prejudice. The Court then

dismissed the jury, the trial was completed, and the Court took the plaintiff's equitable claims under advisement.

FINDINGS OF FACT

1. Ballard is the organizer of the corporate defendant, Warpath.
2. Ballard worked several years to obtain a lease from Duke Power for property on Lake Keowee owned by Duke Energy Carolinas, LLC ("Duke") in Pickens County in order to develop a marina and associated facilities. In this connection, Ballard worked with Pickens County to approve his proposal for developing a marina on the property.
3. On January 3, 2007, Duke signed a lease with Warpath (the "Lease"), leasing the property to Warpath for use as a public park and/or public recreational area as shown on a Conceptual Plan attached to the Lease, which provided for a marina on the property.
4. After Warpath entered into the Lease with Duke, Ballard and the individual defendants entered into discussions concerning potential participation in Warpath.
5. The plaintiff and all the defendants are parties to a Stock Purchase Agreement dated May 29, 2007 (the "Agreement").
6. The Articles of Incorporation of defendant Warpath, dated September 8, 2004, authorize the issuance of 100,000 shares. Those articles have never been amended.
7. At the time the Agreement was entered into, Warpath had issued 40,000 shares, and Ballard owned all the shares.
8. Under the Agreement, the individual defendants received 80,000 shares of Warpath. They received 20,000 shares from Ballard, and they were issued an additional 60,000 shares from the corporation itself.
9. In paragraph 1, the Agreement provides that the individual defendants "will pay to Ballard upon closing the sum of \$1,000,000 in exchange for 20,000 shares of Ballard's 40,000

shares." Ballard received the \$1,000,000 personally; the corporation received no payment in connection with the closing. Roberson provided the \$1,000,000.

10. The Agreement further provides in paragraph 1 that the individual defendants "will receive from the corporation additional shares so that Ballard will hold 20% of the stock and the other 80% will be held" by the individual defendants "when all shares are finally issued."

11. The Agreement contains commitments by the individual defendants to provide funding and services to the corporation. In paragraph 6, "Roberson agrees to provide the necessary capital to obtain long term financing on the project." In paragraph 5, the defendant Rick Thoennes ("Thoennes") and Rick Thoeonnes III ("Thoennes III") agree to provide "development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate."

12. In paragraph 1, the Agreement also sets out the "final holdings" of the individual shareholders. Ballard's "final holding" is 20%. The Agreement further provides in paragraph 7 that Ballard will not be required to sign any personal guarantees. The Agreement provides for no obligation for Ballard to provide any additional contribution of capital or any additional funds to Warpath.

13. The corporation issued 60,000 additional shares to the individual defendants.

14. The individual defendants argue that they paid \$1,000,000 for the entire 80,000 shares. However, the Agreement and the method of payment make clear that the individual defendants paid Ballard \$1,000,000 for 20,000 of his shares. In addition, they committed to provide funding and services to the corporation and received 60,000 shares from the corporation.

15. Consistent with the plain language of the Agreement, Thoennes testified that the individual defendants earned their shares by performing their obligations to the corporation set out in the Agreement.

16. The individual defendants received 60,000 shares from the corporation in exchange for their promises to provide the funding and services to the corporation as set out in the Agreement.

17. Upon the closing, the individual defendants controlled Warpath and owned 80% of its stock.

18. The individual defendants' attorney drafted the Agreement and handled the closing.

19. Warpath did not place in escrow the 60,000 shares received by the individual defendants from the corporation.

20. Those 60,000 shares have never been placed in escrow.

21. After the individual defendants acquired their shares, they became unhappy about the development of Warpath, because Duke would approve a plan for the marina that would accommodate 102 wet boat slips, whereas the individual defendants had planned for up to 200 wet boat slips and had made financial projections based on 200 wet slips. Further, it took longer to obtain approval for permits from the South Carolina Department of Health and Environmental Control ("SC DHEC") than the individual defendants had hoped for.

22. The individual defendants decided that they wanted Ballard out of the corporation. The individual defendants admitted at trial that at one point they wanted Ballard out of the corporation. In an email dated October 28, 2007, Thoennes III wrote Thoennes and

Roberson: "Don't we want to get [Ballard] out of the deal?" Roberson replied: "I think he will take his 1M and run . . . after a little threatening, posturing and whining."

23. The individual defendants came up with a plan to issue additional stock.

Roberson wrote Thoennes on December 28, 2007:

"When an investor realizes that an expected ROI [return on investment] is not forthcoming, his only viable option is acquire more equity at a reduced rate. In order to properly refinance the project, I would suggest that we increase the number of outstanding shares to 500,000 with a mixture of both preferred and common stock. As long as the outstanding shares remain in the treasury, there is no dilution of current shareholders. However, those outstanding shares could be used as tender (same as cash) to accomplish the needs of the corporation."

24. At the time this message was written, Roberson was the only investor who had made a cash investment, by providing the \$1,000,000 for the purchase of Ballard's 20,000 shares.

25. Under the Agreement, Roberson personally has the obligation to "provide the necessary capital to obtain long term financing for the project."

26. The individual defendants approached Ballard to ask him to take action to reduce his percentage ownership in Warpath or to repay funds he had received for his 20,000 shares, in order to improve the relative financial and/or ownership positions of the individual defendants. Ballard refused to agree to a change in the ownership of the corporation or the terms of the arrangement as set out in the Agreement.

27. On May 1, 2008, a meeting was held of the shareholders of Warpath. At the meeting, the individual defendants elected themselves directors and did not elect Ballard a director. Prior to this meeting, Ballard had been a director and officer of Warpath. Ballard asked to be elected a director, but none of the defendants seconded his nomination, and his nomination failed for lack of a second.

28. After they elected themselves directors, the individual defendants passed a Board resolution proposing that Warpath issue an additional 900,000 shares beyond the 100,000 shares outstanding and authorized by the Articles of Incorporation, "in order to raise capital, pay expenses and offer employee incentives." The Board then presented a resolution to the shareholders authorizing the issuance of the 900,000 shares "for the purpose of raising additional capital, paying expenses and offering employee incentives." That resolution was passed by the votes of the individual defendants, with Ballard dissenting.

29. The minutes of the shareholder meeting contain no authorization for amendment of the Articles of Incorporation.

30. At the meeting, Roberson was elected President of Warpath, Thoennes III was elected Vice President, and Thoennes was elected Secretary-Treasurer. They remain in those offices today.

31. After this meeting, Ballard was excluded from the management and planning for Warpath and was not kept informed concerning any plans for financing the development of the project.

32. After this meeting, on July 30, 2008, Ballard filed suit seeking an injunction against the issuance of stock beyond the 100,000 shares already issued. In response, the defendants filed an answer and counterclaims, accusing Ballard of breach of contract and breach of contract with a fraudulent act and alleging promissory estoppel, based on Ballard's allegedly purposeful false statements regarding approvals from Duke and Pickens County.

33. During discovery, Roberson testified that he planned to employ the husband of his niece, his niece, two of his sisters, and a friend at the marina once it was operating.

34. After discovery, on August 25, 2009, Ballard amended his complaint to add claims of breach of fiduciary duty and oppression of the minority shareholder, among other things.

35. Thereafter, on August 27, 2009, after Ballard amended his complaint and while the litigation was pending, the defendants issued a notice of shareholder meeting where they proposed to elect a slate of directors that would include Ballard as a director.

36. On September 29, 2009, the shareholder meeting was held, and Ballard was elected one of four directors at the motion of the individual defendants, as were the individual defendants.

37. Subsequent to that election, there has been no meeting of the board of directors of Warpath. The individual defendants have not shared with Ballard any plans or proposals for the financing of the Warpath development, and Ballard has not received updates on the status of the development or the finances or financial plans of Warpath. The election of Ballard as a director was a litigation tactic and did not provide him any meaningful role in the governance of Warpath.

38. In response to the amended complaint, the defendants filed counterclaims that accused Ballard of breach of contract, breach of contract accompanied by a fraudulent act, fraud, negligent misrepresentation, and violation of S.C. Code § 35-1-501 in connection with the sale of securities. The defendants alleged that Ballard made intentionally false representations regarding the marina in connection with the sale of the Warpath stock.

39. At trial, after the cross examination of Roberson by Ballard's counsel, it became clear that the evidence did not support the defendants' counterclaims and that, in particular, there was no evidence that Ballard had defrauded the defendants.

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40. At trial, after the cross examination of Roberson by Ballard's counsel, the defendants dismissed their counterclaims with prejudice.

41. After dismissal of the counterclaims with prejudice, the Court dismissed the jury, heard the remaining evidence, and took Ballard's equitable claims under advisement.

42. Prior to trial, the Court had entered an order enjoining the defendants from issuing any additional stock until the entry of final judgment in this case.

CONCLUSIONS OF LAW

1. S.C. Code § 33-6-210 (e) (emphasis added) provides that "[e]xcept as otherwise provided in subsection (f) [not relevant here], *the corporation must place in escrow shares issued for a contract for future services or benefits or for a promissory note.*"

2. By its plain language, this statute is mandatory and requires the corporation to place in escrow shares issued for a contract for future services or benefits.

3. In connection with the Agreement, the individual defendants obtained 80,000 shares of Warpath. The individual defendants were issued 60,000 shares by Warpath. Ballard owned 40,000 shares, and the individual defendants bought 20,000 of his shares. Ballard personally received \$1 million from the individual defendants for his 20,000 shares. The Agreement provides that Ballard received "\$1,000,000 for 20,000 shares of Ballard's 40,000 shares" and that the defendants "will receive from the corporation additional shares." The corporation received no payment from the defendants for the additional 60,000 shares.

4. Instead, in the Agreement, the individual defendants agreed to perform services for, provide capital to, and arrange for long term financing for the corporation. The \$1 million

was paid to Ballard personally. The remaining 60,000 shares obtained by the defendants were issued by the corporation, which received none of the \$1 million.

5. These 60,000 shares were issued for a contract or contracts for future services or benefits, as set out in S.C. Code § 33-6-210 (e). Under the plain language of the statute, they must be placed in escrow.

6. In his amended complaint, Ballard did not state a claim under S.C. Code § 33-6-210 (e). However, at trial, both parties argued this issue extensively and the Court received post-trial briefing on the issue. At trial, Ballard moved to amend his amended complaint to add this claim. The Court grants this motion. See SCRCP 15 (a) & (b).

7. The defendants are ordered to place in escrow the 60,000 Warpath shares that were issued to the individual defendants by Warpath.

8. Ballard's Twelfth Cause of Action seeks relief under S.C. Code §§ 33-14-300 and 310. Under those statutes, a Court may "provid[e] for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders" and may "direct[] or prohibit[] any act of the corporation or of shareholders, directors, [or] officers" upon a finding that "the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder." S.C. Code §§ 33-14-300 (2)(ii) and 310 (d)(3) and (d)(4).

9. Under *Kiriakides v. Atlas Food Systems & Services, Inc.*, 343 S.C. 587, 603-06, 541 S.E.2d 257, 266-68 (2001), the Court must evaluate whether the conduct and actions of the defendants toward Ballard are "oppressive" or "unfairly prejudicial"; the Court does not evaluate the "reasonable expectations" of the minority shareholder.

10. The Court examines and weighs the "totality of the circumstances" in determining whether a buyout or other relief is appropriate. Kiriakides, 343 S.C. at 606, 541 S.E.2d at 268.

11. In this case, the totality of circumstances demonstrates that the individual defendants acted oppressively towards Ballard as the minority shareholder and acted in a way that was unfairly prejudicial to him.

12. The evidence demonstrates that:

(a) After obtaining control of the corporation, the individual defendants determined they wanted Ballard out of the corporation;

(b) The individual defendants decided to have the corporation issue additional stock to increase their return on investment;

(c) The individual defendants removed Ballard as a director by refusing to elect him as one of four directors at the first stockholders meeting after they obtained control of the corporation, even though Ballard was the founder and organizer of the company and one of four shareholders;

(d) Even though Roberson had the contractual obligation to provide the necessary capital for the corporation to obtain long term financing, the individual defendants passed a corporate resolution to issue additional stock to raise capital;

(e) Upon the issuance of the additional 900,000 shares, Ballard's ownership in Warpath would have been reduced to 2%, a tenth of his "final holdings" as provided in the Stock Purchase Agreement;

(f) After Ballard was no longer a director, he was excluded from the management of Warpath and was not provided information concerning the status of any efforts to finance the development or any periodic updates on the status of the development;

(g) While the litigation was pending and after Ballard filed additional claims alleging violations of fiduciary duty and corporate oppression, the individual defendants called a shareholder meeting and elected Ballard a director. Thereafter, they never held a meeting of the board of directors and did not provide Ballard with substantive information regarding the finances, financial plans, and development plans for the marina. The election of Ballard was a litigation tactic and did not provide Ballard any meaningful role in the governance of Warpath;

(h) Roberson, who is the President of Warpath, testified that he plans to employ his niece's husband, his niece, his two sisters, and a friend at Warpath. Ballard is not an employee of Warpath, and there was no testimony of any plans to make him an employee. The corporate resolution passed by the individual defendants also allows for stock to be issued to offer "employee incentives." Thus, Roberson intends to have Warpath employ members of his family and a personal friend, and the corporate resolution passed by the defendants provides that his family and friend may receive stock in the company. Ballard will not receive a salary from the company and will not receive stock as an employee incentive, since he is not an employee of Warpath and there are no plans for him to be an employee of Warpath;

(i) The Articles of Incorporation of Warpath provide for the issuance of 100,000 shares of stock; they have never been amended; and the stockholders of Warpath have never authorized an amendment of the Articles of Incorporation increasing the amount of authorized shares beyond 100,000. Thus, the resolution adopted by the shareholders authorizing the issuance of 900,000 additional shares is contrary to the Articles of Incorporation of Warpath, and any issuance of stock by Warpath beyond the 100,000 shares already issued would be in violation of the Articles of Incorporation;

(j) The defendants filed and pursued counterclaims against Ballard making serious allegations against him of intentional false statements in connection with the sale of securities. At trial, there was no evidence to support these claims of fraud, and the evidence presented at trial did not support the counterclaims asserted by the defendants. After Roberson's cross examination, it was apparent that there was no basis for the counterclaims. Roberson's testimony included admissions that Ballard had told the defendants exactly what Duke had told them regarding wet slips, that Ballard was not responsible for the period of time taken by SC DHEC to issue permits, and that the defendants knew that the issuance of the permits was uncertain. Thus, the individual defendants, who are officers, directors, and majority shareholders of Warpath, made baseless counterclaims against Ballard, the minority shareholder.

13. The defendants have argued that Ballard has preemptory rights to purchase stock when stock is issued pursuant to the resolution adopted by the individual defendants. However, that argument disregards the provisions of the Agreement. The Agreement provides that Roberson has the obligation to provide the necessary capital to obtain long term financing and specifically provides that Ballard will not even be required to sign any personal guarantees. The Agreement likewise provides that Ballard's "final holding" will be 20% of the company. The authorization to issue stock to raise capital was thus contrary to the terms of the Agreement, which places that obligation on Roberson, and Ballard specifically has no obligation under the Agreement to provide additional capital to the corporation in order to maintain his final holding of 20%.

14. Therefore, the Court finds the defendants acted in a manner that is illegal, oppressive, and unfairly prejudicial to Ballard, within the meaning of S.C. Code § 33-14-300 (2)(ii).

15. The Court has observed the parties during pretrial proceedings and during the trial and has reviewed materials regarding their business relationships during pretrial motions and at trial. From the evidence and the Court's observation of the trial proceedings and based on the findings set out above, the Court concludes that the proper equitable remedy is to provide for the purchase of Ballard's shares at their fair value by the defendants, jointly and severally, as set out in S.C. Code § 33-14-310 (d)(4). This remedy is the appropriate one given the conduct of the defendants as found above. It also is apparent that the plaintiff and the individual defendants are no longer compatible as co-owners of Warpath.

16. In order to provide for the purchase of Ballard's shares, the Court must determine the fair value. The Court directs the parties to communicate and attempt to agree on an appraiser or valuation expert for the valuation of Ballard's shares, taking into account the Agreement. If the parties are unable to agree on an appraiser or valuation expert by May 10, 2010, the parties are instructed to separately provide to the Court by May 17, 2010, the names of three proposed appraisers or valuation experts, without either party disclosing its list to the other. The Court will then select an appraiser or valuation expert to value Ballard's shares, taking into account the Agreement. Thereafter, the Court will consult with the parties to set a date for a valuation proceeding.

17. The Court has previously entered an injunction against the issuance of further shares of Warpath until the entry of final judgment. That injunction remains in place, according to its terms, and is also reaffirmed in order to preserve the status quo pending the purchase of Ballard's shares.

18. Ballard's remaining causes of action seek an injunction against the issuance of additional shares and the return by the individual defendants to Warpath of the 60,000 shares

they received from the corporation. Since the Court orders the defendants to buy Ballard's shares and since the existing injunction will stay in place until that purchase is complete, the Court need not and will not address Ballard's other claims at this time.

IT IS SO ORDERED.


The Hon. Edward W. Miller
Circuit Judge

Greenville, South Carolina

5-3, 2010

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

2010 MAY -4 AM 9: 22
CASE NO: 2008CP2305739

FILED-CLERK OF COURT
M. L. B. WICKENSIMER
GREENVILLE CO. SC

Andrew P Andy Ballard vs. Tim Roberson

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 4th day of April, 2010, and a copy mailed first class this 4th day of April, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Frank S. Holleman III Wyche Burgess
Freeman & Parham, P.A. P.O. Box 728
Greenville, SC 296020728
Hannah Rogers Metcalfe Wyche, Burgess,
Freeman & Parham, P.A. P.O. Box 728
Greenville, SC 296020728

Joshua Howard Haynsworth, Sinkler, Boyd, Pa
Po Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

CPFORM4M

STATE OF SOUTH CAROLINA

FILED-CLERK OF COURT
GREENVILLE COUNTY
PAUL E. WATKINS, JR.

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,

Case Number: 2008-CP-23-5739

Plaintiff,

ORDER OF JUDGMENT

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

This matter is before the Court for the determination of the fair value of the plaintiff's ownership interest in Warpath Development, Inc., for purposes of the judicially forced buyout ordered by the Court in its Order of May 4, 2010. Based upon the evidence presented to the Court by both parties and by the court-appointed appraiser at the hearing held on August 6, 2013,¹ the pre-hearing submissions of the parties and the appraiser, and the post-trial submissions of the parties and the appraiser, the Court finds the fair value of the plaintiff's ownership interest is \$3,589,297. The Court orders defendants, jointly and severally, to pay plaintiff this amount within 90 days of the date on which this Order is entered, in exchange for which the plaintiff shall relinquish his shares of common stock of Warpath Development, Inc., and hereby enters judgment to this effect.

The plaintiff, Andy Ballard, is the founder of the corporate defendant, Warpath Development, Inc., and was its sole owner, officer, and director for a number of years. The company was formed to develop a marina and related properties (such as rental cabins, a hotel, a

¹ Prior to and at the hearing, the plaintiff moved to incorporate the record of the 2010 trial into the record of the valuation hearing. No objection was made to this request, and the prior record was so incorporated.

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restaurant, marina store, and the like) on Lake Keowee in the Upstate of South Carolina, and through Mr. Ballard's efforts obtained a potentially perpetual lease from Duke Power Company for the land at the site of the marina.² All necessary permits to construct and develop the marina and related properties were obtained by the summer of 2010.

Under a Stock Purchase Agreement dated May 29, 2007, defendant Roberson purchased 20,000 shares of Warpath stock directly from Mr. Ballard for \$1 million, and he and the other two individual defendants also received 20,000 shares each from the company in exchange for future services they agreed to provide to the company, as set forth in the Agreement. Mr. Ballard retained ownership of 20,000 shares. Over the course of the year following the execution of their contract, the parties' relationship deteriorated. By October of 2007, only a few months after signing the Stock Purchase Agreement, the individual defendants began discussions among themselves of how to force Mr. Ballard out of the company. When they began to take steps to do so, Mr. Ballard filed suit in July 2008. The operative pleading, the Amended Complaint filed in August 2009, alleged that the defendants had engaged in majority shareholder oppression of the minority, and also sought to require the individual defendants to place in escrow or disgorge the 60,000 shares issued to them by the company, on the ground that they had not provided the services that were the consideration for the shares.

This Court tried the case and on May 4, 2010, entered an Order finding that the defendants had engaged in shareholder oppression of Mr. Ballard and ordering them to buy out his stock at fair value. The 2010 Order provided that the value for Mr. Ballard's stock would be determined at a subsequent hearing. Before that hearing occurred, however, the defendants

² The lease term goes to 2046, but is automatically renewed as long as the lessee is in compliance with the lease agreement. Lease Agreement, ¶ 1. In effect, therefore, it is a perpetual lease.

S.C.L. Rev. 195, 223 (1995) (“[I]t seems likely that the definition of fair value [in section 33-13-101(3)] would also be used in dissolution cases.”). The seminal case in South Carolina determining fair value in the dissenters’ rights context is *Santee Oil Co. v. Cox*, 217 S.E.2d 789 (S.C. 1975). In that case, the Court held that “fair value means ‘intrinsic value,’” which the trial court must undertake to compute by determining the “value of the corporate property as an established and going business.” *Id.*, 217 S.E.2d 791 (emphasis added). The Court further held that “the three major factors to be considered are: (1) net asset value; (2) market value; and (3) the earnings or investment value” *Id.* Finally, “[a]fter these various factors have been considered and determined in a given case they should then be weighed as to their relative bearing upon the ultimate question of the fair value of the dissenting stock ... and a final determination of value made.” *Id.* 217 S.E.2d at 792.

The above is the approach that the court-appointed appraiser, Dr. Perry Woodside, utilized in making his calculations. Dr. Woodside determined that the present value³ of the company would be \$7,178,594 if construction of the project had begun in June 2010, when the final needed permit was obtained. The plaintiff presented substantial evidence, including statements made by the defendants themselves to third parties, tending to prove that Dr. Woodside’s valuation is, if anything, on the low side. For example, evidence introduced at the hearing showed that defendants represented to a third party in 2011 that the “current value” of the company’s property was \$6,000,000 “in its present condition.” Pl. Ex. 4(B), p.2. Defendants also repeatedly represented to third parties that the value of the company upon completion of construction would be in the range of \$28 million to \$37 million. Pl. Ex. 4(A) – 4(D). Plaintiff’s

³ More precisely, Dr. Woodside calculated what the present value of the company would have been in December 2012 if construction of the project had begun then, and alternatively what it would be at that time if construction had begun in June 2010.

appraisal expert, Dr. Charles Alford, demonstrated that the present value of a future value of this magnitude is in the range of \$9.3 million to \$12 million.

The courts uniformly recognize that the valuation of shares in a forced buyout of stock in a closely held company is a flexible, context-specific process that should be guided by the overarching goal of reaching a result that is fair to the parties. *See, e.g., Belk of Spartanburg, S.C., Inc. v. Thompson*, 337 S.C. 109, 124, 522 S.E.2d 357, 365 (Ct. App. 1999) (“Appraisal is not an exact science, and the precise weight to be given to any factor is necessarily a matter of judgment for the court in the light of circumstances in each case.” (citation omitted)); *Hendley v. Lee*, 676 F. Supp. 1317, 1327 (D.S.C. 1987) (“Obviously, the ultimate issue is what is fair between the parties in each case.”). Based on all of the evidence presented to the Court, and considering the equities of the case, the Court concludes that, for purposes of S.C. Code section 33-14-310(d), \$7,178,594 is a fair and reasonable estimate of the total economic value of the company and that it is supported by the preponderance of the evidence.

It remains to determine whether to count the defendants’ shares of stock that are held in escrow in determining the fair value of the plaintiff’s ownership interest. Section 33-6-210(e) of the South Carolina Code states that “the corporation must place in escrow shares issued for a contract for future services.” S.C. Code Ann. § 33-6-210(e) (emphasis added). The shares must remain in escrow until “the services are performed ... or the benefits are received.” *Id.* Further, “[a]ny share dividends in respect of the shares escrowed also must be placed in escrow.” *Id.* (emphasis added). If the contract for future services is not completed, the escrowed shares “may be canceled in whole or in part, and the corporation may reclaim the distributions.” *Id.* (emphasis added). South Carolina’s statute differs from the Model Business Corporation Act and the statutes of most other states, which provide that a “corporation may place in escrow shares issued

for a contract for future services." *See, e.g.,* Model Bus. Corp. Act § 6.21(e) (emphasis added); Conn. Gen. Stat. § 33-672(e).

The South Carolina General Assembly's substitution of "must" for "may," and the resulting statutory mandate that shares issued in consideration for future services and any dividends issued thereon be held in escrow, shows that the General Assembly intended to prohibit the value of a shareholder's investment from being unfairly diluted through the issuance of stock to other shareholders in exchange for future services which may be never delivered. As the commentary for Section 33-16-210 notes, "this problem is particularly acute if the persons providing [future] services, promissory notes, or property or benefits of debatable value are themselves connected with the promoters of the corporation or with its directors," which is exactly the case here. Furthermore, Section 33-16-210(e) specifically provides that "if the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed and the distributions credited may be canceled in whole or in part and the distributions escrowed may be reclaimed by the corporation."

In light of these provisions of the South Carolina Code, the Court finds that Mr. Ballard's stock ownership should not be diluted by giving the individual defendants the benefit of the escrowed shares in determining the value of the plaintiff's shares. The parties' Stock Purchase Agreement was a binding contract in which the individual defendants committed themselves to provide certain elements of value to the company in exchange for the shares of stock issued to them. As to defendant Roberson, he was to supply the capital necessary to obtain long-term financing for the company; as to the Thoenneses, they were to assist with obtaining long-term financing and carry out the development of the project once the financing had been obtained. It is undisputed that these defendants have failed to carry out those contractual commitments.

They have failed to bring the value to the company that they agreed to provide in exchange for their shares. Accordingly, for purposes of assessing the fair value of Mr. Ballard's stock ownership under section 33-14-310(d), the escrowed shares should not be counted, and plaintiff's ownership percentage should be treated as 50% of the value of the company as a whole. As a result, the fair value of his stock is 50% of \$7,178,594, or \$3,589,297.

The Court finds that 90 days is a fair and reasonable period of time for the defendants to meet the terms of the buyout hereby ordered. While they have requested a lengthy payout period, the Court finds that this would be neither equitable nor practical. The defendants have had over six years now to satisfy their contractual obligations under the Stock Purchase Agreement, and have known for at least three years (since the 2010 Order) that they were facing the possibility of having to buy out the plaintiff. Thus, they have had enough time already to prepare for this moment. Instead of attempting to find ways to squeeze out the founder of the company, if they had merely done what they had agreed to do in the first place, or alternatively marshaled their assets so as to be ready to pay a reasonable buyout price, they would not now be in the predicament they claim to face. He who seeks equity must do equity, and it would be unfair to the plaintiff to allow this 5-year-old dispute to continue to drag on through a lengthy pay-out period.

Moreover, after the Court issued its 2010 Order, the plaintiff attempted to proceed with the valuation hearing ordered by the Court. Defendants refused to do so, however, and stated that they would not engage in the valuation until they had exhausted their appeal. They had the right to pursue their appeal, but having done so and lost, they should not be allowed to benefit from further delay, particularly since they have failed to prove that having more time will make any difference. Indeed, given the history of the parties' relations, it is highly likely that allowing

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FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKER
2013 OCT 13

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2305739**

Andrew P Andy Ballard Warpath Development Inc	Tim Roberson Rick Thoennes III Rick Thoennes Warpath Development Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
		10/3/2013

For Clerk of Court Office Use Only

This judgment was entered on **3rd day of October, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **3rd day of October, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Frank S. Holleman III 601 West Rosemary Street, Suite 220
Chapel Hill, NC 275160728
Hannah Rogers Metcalfe Metcalfe & Atkinson, LLC 9 Toy
Street Greenville, SC 29601

Joshua L. Howard Haynsworth Sinkler Boyd, P.A. P.O. Box
2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
PAUL B. WICKENSIMER
COUNTY OF GREENVILLE FOR THE THIRTEENTH JUDICIAL CIRCUIT
2014 MAR 27 PM 4 49

Andrew P. (Andy) Ballard,

Case Number: 2008-CP-23-5739

Plaintiff,

**ORDER DENYING DEFENDANTS'
MOTION TO STAY EXECUTION**

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

This matter is before the Court on Defendants' Motion to Stay Execution. For the reasons stated herein, the Court denies the motion.

This is a shareholder oppression case, filed by the plaintiff in July 2008. On May 4, 2010, following a trial, this Court entered an Order finding that the defendants had committed oppression of the plaintiff and ordering defendants to buy out the plaintiff's shares at fair value. The defendants appealed, and the Supreme Court affirmed. On remand, this Court held an evidentiary hearing to determine the fair value of the plaintiff's shares. On October 3, 2013, the Court issued an order (i) valuing Warpath at \$7,178,594, and (ii) directing Defendants to pay 50% of that value (\$3,589,297) to Plaintiff to buy out his ownership. The Court gave the defendants a 90-day grace period to arrange for payment of the judgment.

Defendants filed a notice of appeal from that judgment on December 20, 2013. On January 7, 2014, defendants filed the motion to stay. In it, defendants ask the Court to stay execution of the judgment for the duration of defendants' second appeal, and submit that the Court should not require a bond as a condition of staying execution.

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Under Rule 62(d), SCRCF, and Rule 241, SCACR, the Court has the discretion to grant or deny the motion to stay. See *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007) ("Whether to grant such a stay rests in the court's discretion 'on such conditions for the security of the [creditor] as are proper'"). No South Carolina state court has provided assistance on exercising this discretion. Accordingly, the Court may look to federal cases interpreting similar federal rules for guidance. See *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure."); see also Comments to Rule 62, SCACR (noting that "rule 62 is drawn from the Federal Rule").¹

In interpreting Rule 62(d), FRCP, the United States Supreme Court has laid out four factors that courts should examine when determining whether or not to grant a motion to stay execution. Under this framework courts should examine the following:

- (i) movant's likelihood of success on the merits,
- (ii) the extent of movant's injury absent a stay,
- (iii) the extent of injury to non-movants if a stay is granted, and
- (iv) the public interest.

Hilton v. Braunskill, 481 U.S. 770, 776, 107 S. Ct. 2113, 2119, 95 L. Ed. 2d 724 (1987).

Applying the *Hilton* standard, the Court finds that defendants have failed to carry their burden that the balance of the four factors supports a stay of execution. In particular, defendants have not made a showing of likelihood of success on the merits, injury to them if a stay is denied that outweighs plaintiff's injury if a stay is granted, or that the public interest is better served if

¹ Rule 62(d), SCRCF, states that "when an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay." Rule 62(d), FRCP, states that "if an appeal is taken, the appellant may obtain a stay by supersedeas bond."

execution is stayed. The plaintiff, on the other hand, makes a persuasive showing that all of these factors favor the denial of a stay.

Furthermore, the defendants have not presented any evidence or argument as to why a bond should not be required as security for plaintiff's judgment should it be affirmed on appeal. At oral argument, defendants' counsel offered to put up defendants' shares in Warpath as security for the judgment, but defendants' continued majority ownership and control of Warpath gives them the ability to render its shares worthless while the appeal takes its course, and therefore this proffer of security is inadequate if not illusory. In light of (a) the fact that the defendants' liability has already been determined and affirmed by the Supreme Court on appeal, (b) defendants' concession at the valuation hearing that a fair price for plaintiff's is at least \$873,000 to \$1,000,000, and (c) defendants' failure to demonstrate likelihood of reversal of the judgment on appeal, there is no reason that a bond to secure the full amount of the judgment should not be required.

At the conclusion of argument on defendants' motion, the Court indicated that it would deny the stay unless the defendants posted a bond for 125% of the amount of the judgment, which is the minimum amount set forth in the local rules of the U.S. District Court for the District of South Carolina, and gave the defendants a week to obtain and post such a bond. See Rule 62.01(A), DSC Local Civil Rules. Defense counsel contended at the motion hearing that South Carolina Code section 18-9-130 caps the amount of any bond this Court may require at \$1,000,000. Plaintiff's counsel contends that this statutory ceiling is not applicable here, given the particular facts and procedural history of this case, the fact that defendants have already appealed liability and lost, and the fact that the judgment also requires the delivery of personal property and thus implicates South Carolina Code section 18-9-150, which does not contain any

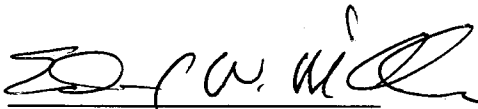
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cap on the amount of a supersedeas bond. While the Court finds plaintiff's argument persuasive, it is not necessary to reach this issue, as the defendants have not offered to post a bond for the \$1,000,000 amount set forth in section 18-9-130.

Accordingly, defendants' motion for a stay of execution is denied.

It is so ordered.

Dated: 3/27, 2014
Greenville, SC


Hon. Edward W. Miller
Judge, South Carolina Circuit Court

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2305739

Andrew P Andy Ballard

Warpath Development Inc

Tim Roberson

Rick Thoennes

PAUL B. WICKENSINER

Rick Thoennes III

Warpath Development
Inc

2014 MAR 27 PM 4 49

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

3/27/2014

Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 27th day of March, 2014, and a copy mailed first class or placed in the appropriate attorney's box on 27th day of March, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Wallace K. Lightsey Wyche P.A. 44 East Camperdown Way
Greenville, SC 29601

William Marvin Wilson III Wyche, P.A. P.O. Box 728
Greenville, SC 29602-0728

Amos A. Workman Wyche, P.A. P.O. Box 728 Greenville,
SC 29602-0728

Joshua L. Howard Haynsworth Sinkler Boyd, P.A. P.O. Box
2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,
Plaintiff,

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

Case Number: 2008-CP-23-5739

CHARGING ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 APR 23 PM 12 01

This matter came before the Court for a hearing upon the Rule To Show Cause issued to the defendants and their attorney, Joshua Howard. The Rule was heard by the Court on April 23, 2014. The Rule directed the defendants to show cause why their assets should not be applied toward the satisfaction of the plaintiff's Judgment against them entered in October 2013.

Pursuant to the evidence and arguments of counsel at the hearing, and the record evidence in this case, the Court hereby enters this Charging Order with respect to the distributional interests of defendants in any limited liability companies in which they have a direct or indirect membership interest.¹

The background of this case has been presented in other orders of this Court. In brief, this is a minority shareholder oppression case. The plaintiff, Andy Ballard, is the founder of the corporate defendant, Warpath Development, Inc., and was its sole owner, officer, and director

¹The relief granted herein is not entered against defendant Rick Thoennes III. At the hearing, plaintiff's counsel advised the Court that on December 2, 2011, while the first appeal was pending, defendant Thoennes III filed a petition for bankruptcy with the United States Bankruptcy Court. An order of discharge was entered by that Court on March 26, 2012. Plaintiff disputes that the discharge applies to or affects the Judgment, but has agreed with counsel for Thoennes III to hold further collection efforts against Thoennes III in abeyance until that issue has been resolved by agreement or court order.

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for a number of years. Under a Stock Purchase Agreement dated May 29, 2007, defendant Roberson purchased 20,000 shares of Warpath stock directly from Mr. Ballard for \$1 million, and he and the other two individual defendants also received 20,000 shares each from the company in exchange for future services they agreed to provide to the company, as set forth in the Agreement. Mr. Ballard retained ownership of 20,000 shares.

Over the course of the year following the execution of their contract, the parties' relationship deteriorated. By October of 2007, the individual defendants began discussions among themselves of how to force Mr. Ballard out of the company. When they began to take steps to do so, Mr. Ballard filed suit in July 2008. The operative pleading, the Amended Complaint filed in August 2009, alleged that the defendants had breached their fiduciary duty to the plaintiff by engaging in majority shareholder oppression, and also sought to require the individual defendants to place in escrow or disgorge the 60,000 shares issued to them by the company, on the ground that they had not provided the services that were the consideration for the shares.

On May 4, 2010, following a bench trial, this Court entered an Order finding that the defendants had breached their fiduciary duty and committed oppression of the plaintiff. The Court ordered defendants to buy out the plaintiff's shares at fair value. The defendants appealed. The Supreme Court affirmed this Court's 2010 Order in August of 2012. On remand, this Court held an evidentiary hearing in August of 2013 to determine the fair value of the plaintiff's shares. At the valuation hearing, plaintiff presented undisputed evidence that the conduct of the defendants previously held to constitute shareholder oppression had continued unchanged and unabated up to the time of the hearing.

On October 3, 2013, the Court issued an order of judgment (the "Judgment") valuing Warpath at \$7,178,594 and directing defendants jointly and severally to pay 50% of that value (\$3,589,297) to plaintiff to buy out his ownership. The Court gave the defendants a 90-day grace period to arrange for payment of the Judgment. Defendants filed a notice of appeal from the Judgment on December 20, 2013. Defendants have not paid any portion of the Judgment.

Plaintiff attempted to execute the Judgment against defendants' assets in Greenville County and Oconee County. The writs of execution in both counties were returned *nulla bona*. On January 7, 2014, defendants filed a motion to stay execution pending appeal. This Court denied that motion by Order dated March 27, 2014. On the same date, the Court issued its Rule To Show Cause.

Based on the evidence presented at the show cause hearing, the Court finds that the defendants directly or indirectly own or control assets that are at risk of being wasted, secreted, or diverted while the defendants' appeal is pending. Some of these assets are owned or controlled through membership in limited liability companies. Under the South Carolina Uniform Limited Liability Company Act, the Court may charge the distributional interest of a judgment debtor to satisfy the judgment, upon application by a judgment creditor of a member of the limited liability company. In addition, a receiver may be appointed to receive any distributions due to or to become due to the judgment debtor from a limited liability company in which the judgment debtor has a membership interest, and the Court may "make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order." S.C. Code Ann. § 33-44-504(a).

ACCORDINGLY, the Court hereby enters this Charging Order upon any and all distributional interests of the defendants in all limited liability companies in which any of them

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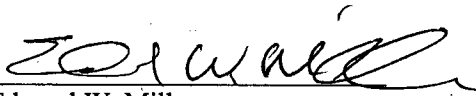

or any entity owned or controlled by any of them is a member. This Charging Order is directed to the defendants, to entities owned or controlled by any defendant, and to the following limited liability companies, as well as any other limited liability companies that are identified as entities in which a defendant or an entity owned or controlled by a defendant has a membership interest:

1. Greenville Gateway Developers, LLC
2. Sozo, LLC
3. Sozo7, LLC
4. IMK Development Co., LLC
5. TRG, LLC
6. Dayspring of South Carolina, LLC
7. Kings Witness, LLC
8. Primus Source, LLC

Upon receipt of this Charging Order, no such limited liability company shall make a distribution directly or indirectly to any defendant, but instead shall transfer all distributions due to or that become due to any defendant to Forensics Research Group, Inc. ("FRG"), in care of its principal Michael F. O'Shea, which is hereby appointed receiver of the defendants' share of any and all such distribution(s). Any distributions received by FRG pursuant to this Order shall be held by FRG pending resolution of the defendants' appeal or further Order of this Court.

Defendants may redeem their distributional interests charged by this Order at any time prior to foreclosure upon the same, pursuant to the methods set forth in South Carolina Code § 33-44-504(c).

IT IS SO ORDERED.


Edward W. Miller
Judge, South Carolina Circuit Court

4/23, 2014
Greenville, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2305739

Andrew P Andy Ballard

Warpath Development Inc

Tim Roberson
Rick Thoennes IIIRick Thoennes
Warpath Development
Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

4/23/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on 23th day of April, 2014, and a copy mailed first class or placed in the appropriate attorney's box on 23th day of April, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Wallace K. Lightsey Wyche P.A. 44 East Camperdown Way
Greenville, SC 29601
William Marvin Wilson III Wyche, P.A. P.O. Box 728
Greenville, SC 29602-0728
Amos A. Workman Wyche, P.A. P.O. Box 728 Greenville,
SC 29602-0728

ATTORNEY(S) FOR THE PLAINTIFF(S)

Joshua L. Howard Haynsworth Sinkler Boyd, P.A. P.O. Box
2048 Greenville, SC 29602
James W. Fayssoux Sr. Fayssoux Law Firm, PA P.O. Box
10207 Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1:

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,
Plaintiff,

Case Number: 2008-CP-23-5739

ORDER APPOINTING RECEIVER

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 APR 23 PM 12 01

This matter came before the Court for a hearing upon the Rule To Show Cause issued to the defendants and their attorney, Joshua Howard. The Rule was heard by the Court on April 23, 2014. Part of the Rule directed the defendants to show cause why a receiver should not be appointed to ascertain by investigation, marshal and protect assets and income of the defendants.

Upon reviewing the record, the evidence, and the applicable law and hearing statements and representations of counsel, I find that a receiver should be appointed with authority to pursue discovery from the defendants and third parties, require the production of documents and other evidence, and take possession of defendants' assets and secure them while defendants' appeal is pending, upon threat of contempt and sanctions by this Court for willful failure to cooperate with the receiver.¹

¹ While the findings of fact contained in this Order apply to all defendants, the relief granted herein is not entered against defendant Rick Thoennes III. At the hearing, plaintiff's counsel advised the Court that on December 2, 2011, while the first appeal was pending, defendant Thoennes III filed a petition for bankruptcy with the United States Bankruptcy Court. An order of discharge was entered by that Court on March 26, 2012. Plaintiff disputes that the discharge applies to or affects the Judgment, but has agreed with counsel for Thoennes III to hold further collection efforts against Thoennes III in abeyance until that issue has been resolved by agreement or court order.

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FINDINGS OF FACT

1. This is a shareholder oppression case, filed by the plaintiff in July 2008. The plaintiff, Andy Ballard, is the founder of the corporate defendant, Warpath Development, Inc., and was its sole owner, officer, and director for a number of years. The company was formed to develop a marina and related properties (such as rental cabins, a hotel, a restaurant, marina store, and the like) on Lake Keowee in the Upstate of South Carolina, and through Mr. Ballard's efforts obtained a potentially perpetual lease from Duke Power Company for the land at the site of the marina. All necessary permits to construct and develop the marina and related properties were obtained by the summer of 2010.

2. Under a Stock Purchase Agreement dated May 29, 2007, defendant Roberson purchased 20,000 shares of Warpath stock directly from Mr. Ballard for \$1 million, and he and the other two individual defendants also received 20,000 shares each from the company in exchange for future services they agreed to provide to the company, as set forth in the Agreement. Mr. Ballard retained ownership of 20,000 shares. Over the course of the year following the execution of their contract, the parties' relationship deteriorated. By October of 2007, the individual defendants began discussions among themselves of how to force Mr. Ballard out of the company. When they began to take steps to do so, Mr. Ballard filed suit in July 2008. The operative pleading, the Amended Complaint filed in August 2009, alleged that the defendants had breached their fiduciary duty to the plaintiff by engaging in majority shareholder oppression, and also sought to require the individual defendants to place in escrow or disgorge the 60,000 shares issued to them by the company, on the ground that they had not provided the services that were the consideration for the shares.

3. On May 4, 2010, following a bench trial, this Court entered an Order finding that the defendants had breached their fiduciary duty and committed oppression of the plaintiff. The Court ordered defendants to buy out the plaintiff's shares at fair value. The defendants appealed.

4. The Supreme Court affirmed this Court's 2010 Order in August of 2012. On remand, this Court held an evidentiary hearing in August of 2013 to determine the fair value of the plaintiff's shares. At the valuation hearing, plaintiff presented undisputed evidence that the conduct of the defendants previously held to constitute shareholder oppression had continued unchanged and unabated up to the time of the hearing.

5. On October 3, 2013, the Court issued an order of judgment (the "Judgment") valuing Warpath at \$7,178,594 and directing defendants jointly and severally to pay 50% of that value (\$3,589,297) to plaintiff to buy out his ownership. The Court gave the defendants a 90-day grace period to arrange for payment of the Judgment. Defendants filed a notice of appeal from the Judgment on December 20, 2013.

6. Defendants have not paid any portion of the Judgment.

7. Plaintiff attempted to execute the Judgment against defendants' assets in Greenville County and Oconee County. The writs of execution in both counties were returned *nulla bona*.

8. On January 7, 2014, defendants filed a motion to stay execution pending appeal. This Court denied that motion by Order dated March 27, 2014. On the same date, the Court issued its Rule To Show Cause.

9. The defendants directly or indirectly own or control assets that are at risk of being wasted, secreted, or diverted while the defendants' appeal is pending.

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10. No other supplementary proceedings are pending against the defendants, and no other receiver of the defendants' property has been appointed.

11. Forensics Research Group, Inc. ("FRG"), and its principal Michael F. O'Shea, are experienced in handling receiverships and financial matters in fiduciary capacities, and FRG is a fit and proper company to act as receiver herein. FRG holds no interest which would interfere with the proper performance of its fiduciary duties as a receiver in this case and is willing to so serve.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.

2. The Judgment was granted in favor of Ballard and has not been satisfied.

3. A receiver may be appointed after judgment to carry the judgment into effect. *See* S.C. Code Ann. § 15-65-10(2).

4. A receiver may be appointed after judgment to dispose of the property according to the judgment. *See* S.C. Code Ann. § 15-65-10(3).

5. A receiver may be appointed after judgment to preserve the judgment debtor's property during the pendency of an appeal. *See* S.C. Code Ann. § 15-65-10(3).

6. A receiver may be appointed after judgment when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment. *See* S.C. Code Ann. § 15-65-10(3).

7. A receiver may be appointed to receive any distributions due to or to become due to the judgment debtor from a limited liability company in which the judgment debtor has a membership interest. *See* S.C. Code Ann. § 33-44-504(a).

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8. South Carolina law otherwise allows for the appointment of a Receiver under the facts of this case.

9. The Court concludes that the plaintiff is entitled to the appointment of a receiver in order to ascertain by investigation and to take possession of and secure assets and income of the defendants until the appeal is resolved.

NOW, THEREFORE, based upon the foregoing findings of fact and the conclusions of law, IT IS THEREFORE ORDERED that:

1. FRG is hereby appointed as Receiver to ascertain by investigation and to take possession of and secure assets and income of the defendants until their appeal of the Judgment is resolved.

2. Immediately following the entry of this Order, and on an ongoing basis as long as this Order remains in effect, defendants shall surrender and deliver possession to FRG of all of the assets and property that they possess, own or control, directly or indirectly, legally or equitably, including all shares of stock of Warpath Development, Inc., and all assets and records of Warpath Development, Inc., and all assets and property that defendants hereafter receive or acquire, directly or indirectly, legally or equitably, while the Order is in effect (all of the foregoing herein referred to as the "Property"), with the exception of property that is exempt from execution or levy (for example, the homestead exemption). As to such exempt property, defendants shall not dispose of or encumber such property beyond the statutory amount of the exemption. If such property is already encumbered such that the owner's equity in the property is less than the amount of the exemption, the owner shall not further encumber or dispose of the property.

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3. Effective as of and from the date of the entry of this Order, all funds or other property that are received by defendants shall be delivered to the Receiver and deposited with a bank of Receiver's choice or otherwise secured by Receiver pending resolution of defendants' appeal.

4. Defendants may request from the Receiver the release of such funds as are required for ordinary living expenses, and the Receiver shall comply with reasonable such requests. Any dispute over such requests shall be brought promptly to the Court.

5. The Receiver will be and hereby is authorized and directed to take immediate possession of defendants' assets and to exercise full control over defendants' assets, provided that Receiver shall not sell or dispose of such assets until further order of this Court, and the Receiver in so doing will have all powers generally available to Receivers under the laws of the State of South Carolina, and will have, among others, the following specific powers:

(a) The power and authority to take possession of property owned or leased by defendants. All parties in possession of any such property are to surrender it to the Receiver upon demand. This property shall include, but not be limited to the following;

- i Real Property
- ii Goods
- iii Inventory
- iv Equipment
- v Chattel Paper and Accounts
- vi Securities and Instruments, including but not limited to Stocks, Bonds, and Promissory Notes
- vii Investment Property
- viii Documents

- ix Deposit Accounts
- x Commercial Tort Claims
- xi Money
- xii Letter of Credit Rights
- xiii General Intangibles
- xiv Supporting Obligations
- xv All Cash or Equivalents, Savings Accounts, Brokerage Accounts, any other bank accounts of defendants;
- xvi All proceeds and products of above

(b) Gather all books and records of defendants, and subpoena or otherwise require production of books and records of third parties, to determine the existence and amount of all defendants' debts and obligations together with all their assets;

(c) To control all bank accounts owned by or for the benefit of defendants. No other person shall have any authority or control over any funds in the accounts, including but not limited to authority or control otherwise disburse funds;

(d) Insurance: With respect to any insurance coverage in existence or obtained, the Receiver shall be named as an additional insured on the policies for the period that the Receiver shall be in possession of the property insured;

(e) Distributions from limited liability companies. The Receiver is hereby authorized to demand and receive any distributions due to or to become due to a defendant from any limited liability company in which the defendant has a direct or indirect membership interest; and any such limited liability company is hereby directed and enjoined, upon receipt of this Order, to make such distribution(s) only to the Receiver while this Order is in effect.

6. Plaintiff and Receiver shall have no obligation to pay for accrued wages, benefit, and taxes, payroll or other, accrued in advance of the date of this Order, whether currently due or owing.

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7. The Receiver will furnish to the Court and to the parties monthly statements itemizing property that has been secured by Receiver pursuant to this Order. Such report will be filed within thirty (30) days after the end of each calendar month, the first such report to be due thirty days after the end of the first month this order is entered and monthly thereafter. The parties to this litigation will be entitled to inspect the books and records of the Receiver concerning assets held by it pursuant to this Order at reasonable times and with reasonable notice.

8. Without further Order of the Court, the Receiver shall be entitled to payment of professional fees and expenses incurred by the Receiver. While the defendants' appeal remains pending, Receiver's fees and expenses shall be paid by plaintiff's counsel. If the Judgment is affirmed in whole or in part, plaintiff's counsel shall be entitled to reimbursement of such payments from the defendants' assets. Receiver's professional fees shall be charged at \$200 per hour for Michael O'Shea's time. All photocopies and facsimile charges along with necessary out-of-pocket expenses (including travel and lodging) will be billed at cost. All fees and expenses of the Receiver shall be accounted for in the Monthly Statement of Operations.

9. The Receiver will have such additional powers as are provided by law and as this Court may from time to time direct.

10. No person or entity shall file suit against the Receiver, plaintiff, or plaintiff's counsel or take any legal action for actions taken in compliance with this Order. All other proceedings by defendants or any creditor of defendants relating to the Judgment or the Property are enjoined.

11. The Receiver shall have no personal liability in connection with any liabilities, obligations, liens or amounts owed to any creditors or claimants of defendants.

12. The Receiver and its employees, agents, and attorneys shall have no personal liability or obligation and shall have no claim asserted against them in connection with the Receiver's actions under this Order.

13. The Receiver may, in its discretion, notify this Court and the parties to this action that the Receivership is not practical, and upon such notice all duties of the Receiver shall terminate except with regard to liabilities which arise prior to the date of the notice. The Court may then appoint a new Receiver to take any and all such other action as it deems appropriate. Receiver shall turn over all of the assets and records secured pursuant hereto to any successor receiver appointed by the Court and shall file a final accounting with the Court.

14. In the event that the defendants fail to immediately turn over their property and other items required by this Order, the appropriate County Sheriff is hereby ordered to take all necessary actions and appropriate force to give full effect to the terms of this Order.

15. All persons who receive notice of this Order are enjoined from interfering with the powers and duties of the Receiver.

16. All providers of insurance with respect to the Property are prohibited and enjoined from cancelling such insurance policies provided that the Receiver pay the applicable premiums for any prospective exposure going forward under the receivership, and such premiums may be paid from assets secured by the Receiver pursuant to this Order.

17. The receiver is not responsible for filing any federal, state, or local tax returns including those relating to any activities during the receivership.

18. The Receiver and the parties to this case may at any time apply to this Court for instructions or orders and for further powers necessary to enable the Receiver to perform the Receiver's duties properly.

19. IT IS FURTHER ORDERED that pending further Order of this Court, the defendants and their respective agents, partners, managers, employees, assignees, successors, representatives, officers, directors, affiliates or related entities and all other persons acting in concert with them who have actual or constructive knowledge of this Order, and their agents and employees, shall not:

A. Commit Waste:

Defendants shall not commit or permit any waste of the Property or any part thereof, or suffer or commit or permit any act on the Property or any part thereof in violation of law, or remove, transfer, encumber or otherwise dispose of any of the Property or the fixtures presently on the Property or any part thereof.

B. Cash or Credit Card Receipts:

Defendants shall not discount or in any other way divert or use any of the monies from the property, including, but not limited to, rents, cash from sales, or credit card receipts.

C. Interfere with Receiver:

Defendants shall not directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession of the Property;

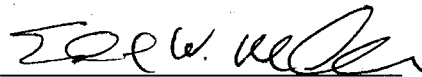
D. Transfer or Encumber the Property:

Defendants shall not expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Property, including, but not limited to, the cash, rents inventory, and fixtures without prior Court Order; and

E. Impair Preservation of Property or Plaintiff's Interest:

Defendants shall not do any act which will, or which will tend to impair, defeat, divert, prevent or prejudice the preservation of the Property, or the preservation of plaintiff's interest in the Property. Defendants are further enjoined from making any payments or transfers of funds or property to or from any affiliates, insiders, directors, officers, family members, or any other person or entity controlled by or otherwise related to any affiliates, insiders, directors, and/or officers.

IT IS SO ORDERED.



Edward W. Miller
Judge, South Carolina Circuit Court

4/23, 2014
Greenville, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2305739

Andrew P Andy Ballard	Warpath Development Inc	Tim Roberson Rick Thoennes III	Rick Thoennes Warpath Development Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b). SCRCP: ☐ Rule 41(a). SCRCP (Nonsuit): ☐ Rule 43(k). SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP: ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed: ☐ Reversed: ☐ Remanded: ☐ Other: _____

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMER
20H APR 23 PM 12 01

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

4/23/2014

Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 23th day of April, 2014, and a copy mailed first class or placed in the appropriate attorney's box on 23th day of April, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Wallace K. Lightsey Wyche P.A. 44 East Camperdown Way
Greenville, SC 29601

William Marvin Wilson III Wyche, P.A. P.O. Box 728
Greenville, SC 29602-0728

Amos A. Workman Wyche, P.A. P.O. Box 728 Greenville,
SC 29602-0728

Joshua L. Howard Haynsworth Sinkler Boyd, P.A. P.O. Box
2048 Greenville, SC 29602

James W. Fayssoux Sr. Fayssoux Law Firm, PA P.O. Box
10207 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The South Carolina Court of Appeals

Andrew P. (Andy) Ballard, Respondent,

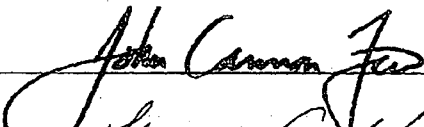
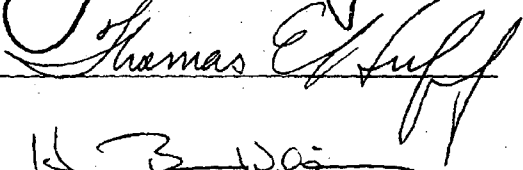
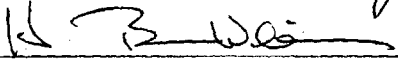
v.

Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc., Appellants.

Appellate Case No. 2013-002790

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Joshua L. Howard, Esquire
Wallace K. Lightsey, Esquire
The Honorable Edward W. Miller

FILED

November 19, 2015

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,
Plaintiff,

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

Case Number: 2008-CP-23-5739

**ORDER DENYING DEFENDANT
ROBERSON'S MOTION FOR RELIEF
FROM JUDGMENT**

This matter is before the Court on the motion of Defendant Tim Roberson to be relieved from the Judgment of October 3, 2013 (the "Judgment") under rule 60(b)(5), SCRCP. The motion was heard by the Court on January 27, 2017, along with several other motions. All parties were represented at the hearing by their respective counsel. The Court denied Defendant Roberson's motion at the hearing, and now enters this Order to memorialize the Court's decision.

The factual and procedural background of this long-protracted litigation are set forth in the numerous prior orders of this Court, the 2012 decision of the South Carolina Supreme Court, and the 2015 decision of the South Carolina Court of Appeals, and will not be repeated here except to the extent particular facts are pertinent to the instant motion. The basis of Defendant Roberson's motion is that Duke Energy has terminated its lease agreement with Warpath Development, Inc. ("Warpath"), for the lease of the property on which Warpath was to construct a marina and related facilities. Defendant Roberson contends that the termination of the lease renders Warpath worthless and therefore makes it inequitable to subject him (along with the other Defendants) to judgment in the amount of \$3,125,000 as determined by the South Carolina

Court of Appeals in its decision of July 2015 to represent the fair value of the Plaintiff's remaining ownership interest in Warpath.

The lease agreement was entered into by Warpath and Duke Energy in January of 2007. In May of 2007, Plaintiff Andy Ballard entered into the Stock Purchase Agreement with the individual Defendants, pursuant to which the individual Defendants gained control of Warpath. Under this Agreement, Defendant Roberson was to provide the necessary capital to obtain long-term financing for the development of the property. The other Defendants were to assist with the procurement of financing and help with the development of the property. That never happened, however, and no meaningful development work was undertaken during the nine years following the execution of the lease agreement with Duke Energy. Consequently, on January 4, 2016, Duke Energy gave notice to Defendant Roberson of its intent to terminate the lease, and on March 4, 2016, Duke Energy formally terminated the lease "for failure to comply with the Conceptual Plan ... as required by the Lease [and] for nonperformance of the lessee."

The Court denies Defendant Roberson's motion for several reasons. First and most fundamentally, it was Roberson's own breach of contract and wrongful conduct toward Ballard (along with that of the other Defendants) that created the circumstances that resulted in Duke Energy's termination of the lease. Roberson agreed in his contract with Plaintiff that he would provide the necessary capital to obtain long-term financing for the project. He had the means to do this, but did not do so because of his efforts to improve the deal terms to his own benefit by forcing Plaintiff out after entering into the contract with Plaintiff and acquiring control of Warpath. As proved by the evidence introduced at the 2010 trial, recited in this Court's findings of fact from that trial, and affirmed by the Supreme Court in its 2012 opinion, when Duke Energy approved 102 boat slips for the marina rather than the 200 slips that Roberson was

hoping to put at the marina, Roberson became dissatisfied with the return on the investment he would have to make in order to procure the financing he was contractually obligated to obtain. See 2010 Order, ¶¶ 21, 22, 23, 26; *Ballard v. Roberson*, 399 S.C. 588, 591-92, 595-96, 733 S.E.2d 107 (2012). Therefore, in order to improve the economics of the deal to benefit himself, he and the other Defendants agreed that they would force Plaintiff out of Warpath if he did not exit voluntarily. When Defendants' effort to squeeze out the Plaintiff was stopped with the filing of this litigation in 2008, the Defendants then sought to render Plaintiff's investment worthless by freezing him out of the company. This Court found such actions to constitute majority shareholder oppression, and the Supreme Court affirmed that finding and the buyout remedy and judgment ordered by this Court.

Because the Defendant's own wrongful conduct led to the lease termination, the Defendant utterly fails to demonstrate that as a matter of equity, he should be relieved from the Judgment. His position is truly like the old adage of the child who kills his parents and then begs for mercy because he is an orphan. If Roberson and the other Defendants had simply done what they had contractually agreed to do in 2007, rather than putting their efforts and energy into forcing out the Plaintiff or rendering his interest worthless, they would not be in the position in which they find themselves. Accordingly, Defendant Roberson has not met the burden of justifying relief from judgment under rule 60(b)(5).

In addition, the Court finds that rule 60(b)(5) does not apply to the Judgment in this case. That provision of rule 60 is directed to judgments that are prospective in effect, typically injunctions and consent decrees that require ongoing supervision by the court of conduct or conditions. It is well established that subpart (5) does not apply to a judgment of money damages. See, e.g., *Saro Inv. v. Ocean Holiday Psp.*, 314 S.C. 116, 120 n.3, 441 S.E.2d 835 (Ct.

App. 1994); *Moody v. Empire Life Ins. Co.*, 849 F.2d 902, 906 (5th Cir. 1988) (“A judgment operates prospectively if it requires a court to supervise changing conduct or conditions that are provisional or tentative.”). While the Order of Judgment in this case directed the Defendants to buy out the Plaintiff, this directive was enforced with the entry of a money judgment, and it is the money judgment to which the instant motion is directed. Further, when the Court entered the Judgment in October 2013, it gave the Defendants 90 days to buy out the Plaintiff. That part of the Judgment was expressly affirmed by the Court of Appeals in its 2015 decision. If Defendants had satisfied the Judgment as ordered, there would be nothing prospective about the Judgment for which Roberson could now seek relief.¹ He should not be allowed to take advantage of his own failure to comply with the Court’s Judgment by asserting that failure as a basis for invoking rule 60(b)(5).

Finally, the Court also finds that Defendant Roberson has not made his motion within a reasonable time, as required by the rule. Duke Energy gave notice of its intent to terminate on January 4, 2016, and provided the formal notice of termination on March 4, 2016. Yet Roberson did not file his motion for relief from the Judgment until January 13, 2017. There is no excuse for this delay. Obviously, Roberson was waiting to see whether the Supreme Court would grant certiorari to review the decision of the Court of Appeals. This is pure gamesmanship. It was not until four months after the Supreme Court denied certiorari, and after this Court scheduled the hearing on Plaintiff’s motion to modify the terms of the receivership in order to proceed with execution of the Judgment, that Defendant filed the instant motion. This is not a reasonable

¹ Ironically, at the time of the 2013 damages hearing, the Defendants represented that they could carry out the purchase of Plaintiff’s stock if the Court were to give them “several years” to do so, rather than the 90 days as ordered. Because of their appeal from the Judgment, the Defendants now have had more than several years to comply with the Judgment, and yet they have utterly failed to do so.

time. Once again, Defendant Roberson is seeking equitable consideration from the Court, while failing himself to act with equity.

Defendant Roberson's motion for relief from the Judgment is denied.

IT IS SO ORDERED.

Edward W. Miller
Judge, South Carolina Circuit Court

_____, 2017
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Andrew P Andy Ballard , plaintiff, et al vs. Tim Roberson ,
defendant, et al
Case Number: 2008CP2305739
Type: Order/Other

So Ordered

s/ Edward W. Miller

Electronically signed on 2017-02-17 09:16:44 page 6 of 6

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,
Plaintiff,

Case Number: 2008-CP-23-5739

vs.

**ORDER MODIFYING
ORDER FOR RECEIVERSHIP**

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

This matter is before the Court on the motion of Plaintiff Andrew Ballard to modify this Court's Order Appointing Receiver dated April 23, 2014 ("Order Appointing Receiver"). The Court held a hearing on January 27, 2014, on this and other motions, and all parties were represented by their respective counsel at the hearing. The Court granted the motion at the hearing, and now enters this written Order to memorialize the Court's decision.

The Order Appointing Receiver was entered for the purpose of investigating, marshalling, and protecting the assets of the Defendants while they pursued their appeal of the Court's Judgment of October 3, 2013 (the "Judgment"). On July 15, 2015, the South Carolina Court of Appeals affirmed the Judgment (with a reduction of the amount to \$3,125,000.00). On September 8, 2016, the South Carolina Supreme Court denied Defendants' petition for certiorari to review the decision of the Court of Appeals, and on September 12, 2016, the Court of Appeals issued the remittitur to this Court.

Defendants have exhausted their appeals, and the Judgment is now final. It is undisputed that the Judgment is wholly unsatisfied and that the Defendants have failed to apply their assets

toward satisfaction of the Judgment. Accordingly, pursuant to S.C. Code § 15-65-10(2), it is appropriate for the Receiver to take action to carry the Judgment (as modified by the Court of Appeals) into effect.

The Order Appointing Receiver is therefore modified as follows:

1. The Receiver is henceforth directed to perform his duties solely in aid of execution pursuant to S.C. Code Ann. § 15-65-10(2) and (3). Any other actions by the Receiver will be ancillary to this function.
2. The Receiver is directed to no longer pay living expenses to the Defendants.
3. The Receiver is empowered to pay over to the Plaintiff assets now in his possession or control or hereafter coming into Receiver's possession and control, which assets shall be applied by Plaintiff toward the satisfaction of Plaintiff's judgment. All such payments shall be made to Plaintiff's counsel, who shall be responsible for the application of the assets to the Judgment.
4. The Receiver continues to possess all the powers and authority previously granted him in the Order Appointing Receiver so as to enable him to carry out his duties, including the continued right to seize assets of the Defendants and turn them over to Plaintiff's counsel, to be applied toward satisfaction of the Judgment.
5. All of the Receiver's fees and costs going forward shall be directly paid from the assets of the Defendants. Payment of those fees and costs, as well as reimbursement to Plaintiff's counsel for prior payments of the Receiver's fees and costs, are not to be applied in satisfaction of the Judgment.

6. Except as modified by the above, the terms and provisions of the Order Appointing Receiver and the Charging Order entered April 23, 2014, shall remain in full force and effect.
7. The application of this Order to Defendant Rick Thoennes, III, shall be addressed by a separate order on Plaintiff's motion to determine the portion of the Judgment that is not discharged by that Defendant's bankruptcy.

IT IS SO ORDERED.

Edward W. Miller
Judge, South Carolina Circuit Court

_____, 2017
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Andrew P Andy Ballard , plaintiff, et al vs. Tim Roberson ,
defendant, et al
Case Number: 2008CP2305739
Type: Order/Other

So Ordered

s/ Edward W. Miller

Electronically signed on 2017-02-17 09:16:22 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,
Plaintiff,

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

Case Number: 2008-CP-23-5739

**ORDER TRANSFERRING DEFENDANT
ROBERSON'S LLC INTERESTS TO
RECEIVER**

This matter is before the Court on the motion of the Receiver previously appointed by this Court to transfer the interests of Defendant Tim Roberson in certain limited liability companies into the possession of the Receiver. The motion was heard by the Court on January 27, 2017, along with several other motions. All parties were represented at the hearing by their respective counsel, and the Receiver was also present at the hearing. The Court granted the Receiver's motion at the hearing, and now enters this Order to memorialize the Court's decision.

On April 23, 2014, this Court entered an Order appointing the Receiver for the purpose of investigating, marshalling, and protecting the assets of the Defendants pending their appeal from this Court's Judgment of October 3, 2013 (the "Judgment"). On July 15, 2015, the South Carolina Court of Appeals affirmed the Judgment (with a reduction of the amount to \$3,125,000.00). On September 8, 2016, the South Carolina Supreme Court denied Defendants' petition for certiorari to review the decision of the Court of Appeals, and on September 12, 2016, the Court of Appeals issued the remittitur to this Court.

Defendants have exhausted their appeals, and the Judgment is now final. It is undisputed that the Judgment is wholly unsatisfied and that the Defendants have failed to apply their assets toward satisfaction of the Judgment. Accordingly, by separate Order the Court has granted Plaintiff's motion to modify the receivership so as to enable the Receiver to take action to carry the Judgment (as modified by the Court of Appeals) into effect, to take action in aid of execution of the Judgment, and to continue to take control of assets of the Defendants for the purpose of applying them to the Judgment.

The Receiver's motion is directed to Defendant Roberson's ownership interests in three South Carolina limited liability companies: TRG, LLC; Greenville Gateway Developers, LLC; and Sozo7, LLC. To the extent these interests have value that may be applied to the Judgment, it is appropriate that the Receiver take possession and control of the interests. Section 504(a) of the South Carolina Code provides as follows:

On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

S.C. Code § 504(a) (emphasis added).

Accordingly, pursuant to this provision of the Code as well as S.C. Code § 15-65-10(2) and (3), Defendant Roberson's interests in TRG, LLC; Greenville Gateway Developers, LLC; and Sozo7, LLC, are hereby transferred into the possession and control of the Receiver, Forensics Research Group, Inc. ("FRG") in care of its principal Michael F. O'Shea, to be applied as the Receiver sees fit toward payment of the Judgment. Pursuant to this Order, the Receiver shall have all of the rights appurtenant to those interests, including the right to receive distributions and the right to vote those interests on matters put to the respective members of

those limited liability companies, as necessary to give effect to this Order, the Order Modifying Order for Receivership, and the Charging Order entered April 23, 2014.

Except as modified by the above and by the Order Modifying Order for Receivership, the terms and provisions of the Order Appointing Receiver and the Charging Order, shall remain in full force and effect. Further, this Order shall be construed so as to add to, and not take away from, the authority granted the Receiver in those Orders.

IT IS SO ORDERED.

Edward W. Miller
Judge, South Carolina Circuit Court

_____, 2017
Greenville, South Carolina



Greenville Common Pleas

Case Caption: Andrew P Andy Ballard , plaintiff, et al vs. Tim Roberson ,
defendant, et al
Case Number: 2008CP2305739
Type: Order/Other

So Ordered

s/ Edward W. Miller

Electronically signed on 2017-02-17 09:16:00 page 4 of 4

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE JUL 30 P 4: 20

Andrew P. (Andy) Ballard,

FILED: CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMR

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

2008-CP-23-573Q

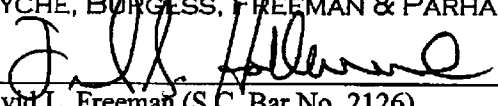
CASE NO.: _____

SUMMONS

TO THE DEFENDANT, RICK THOENNES:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at 44 East Camperdown Way, P.O. Box 728, Greenville, SC 29602-0728, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

WYCHE, BURGESS, FREEMAN & PARHAM, P.A.



David L. Freeman (S.C. Bar No. 2126)

Frank S. Holleman (S.C. Bar No. 2564)

Hannah R. Metcalfe (S.C. Bar No. 73046)

44 E. Camperdown Way

P.O. Box 728 (29602-0728)

Greenville, SC 29601

Phone: 864-242-8200

Facsimile: 864-235-8900

Email: dfreeman@wyche.com

fholleman@wyche.com

hmetcalfe@wyche.com

Dated: 7/30/08
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Andrew P. (Andy) Ballard,

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
DATE: 7/30/08 WICKENSIMER

2008-CP-23-5739
CASE NO.: _____

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

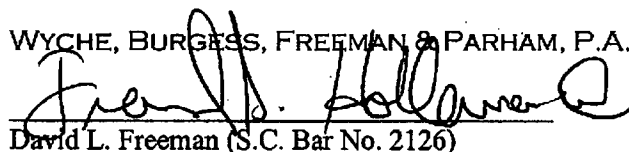
SUMMONS

Defendants.

TO THE DEFENDANT, RICK THOENNES, III:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at 44 East Camperdown Way, P.O. Box 728, Greenville, SC 29602-0728, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

WYCHE, BURGESS, FREEMAN & PARHAM, P.A.


David L. Freeman (S.C. Bar No. 2126)

Frank S. Holleman (S.C. Bar No. 2564)

Hannah R. Metcalfe (S.C. Bar No. 73046)

44 E. Camperdown Way

P.O. Box 728 (29602-0728)

Greenville, SC 29601

Phone: 864-242-8200

Facsimile: 864-235-8900

Email: dfreeman@wyche.com

fholleman@wyche.com

hmetcalfe@wyche.com

Dated: 7/30/08
Greenville, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2008 JUL 30 P 4: 20

2008-CP-23-5739

Andrew P. (Andy) Ballard,

Plaintiff, FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENS IMFR
CASE NO.: _____

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

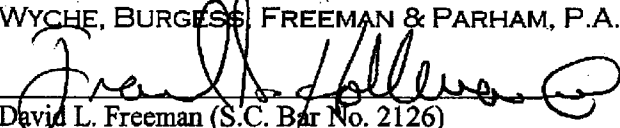
SUMMONS

Defendants.

TO THE DEFENDANT, WARPAT DEVELOPMENT, INC.:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at 44 East Camperdown Way, P.O. Box 728, Greenville, SC 29602-0728, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

WYCHE, BURGESS, FREEMAN & PARHAM, P.A.


David L. Freeman (S.C. Bar No. 2126)
Frank S. Holleman (S.C. Bar No. 2564)
Hannah R. Metcalfe (S.C. Bar No. 73046)
44 E. Camperdown Way
P.O. Box 728 (29602-0728)
Greenville, SC 29601
Phone: 864-242-8200
Facsimile: 864-235-8900
Email: dfreeman@wyche.com
fholleman@wyche.com
hmetcalfe@wyche.com

Dated: 7/30/08
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

2008 JUL 30 PM 4:20 COURT OF COMMON PLEAS

2008-CP-23-5130

Andrew P. (Andy) Ballard,

Plaintiff,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENBARGER

CASE NO.: _____

vs.

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc.,

Defendants.

**COMPLAINT
(JURY TRIAL)**

The plaintiff, Andrew P. (Andy) Ballard ("Ballard"), complaining of the defendants, alleges as follows:

1. Ballard is a citizen and resident of Greenville County, South Carolina.
2. The defendants Tim Roberson, Rick Thoennes, and Rick Thoennes III are citizens and residents of Greenville County, South Carolina.
3. The defendant Warpath Development, Inc. ("Warpath") is a South Carolina corporation with its records located in Greenville County, South Carolina. The principal asset of Warpath is a lease on property located at Lake Keowee in Oconee County, South Carolina, and associated assets.
4. Warpath has been working toward developing a marina on the property located on Lake Keowee.
5. Ballard and the defendants are parties to a Stock Purchase Agreement, dated May 29, 2007, attached hereto and incorporated herein (the "Agreement").
6. Prior to the Agreement, Ballard was the sole shareholder of Warpath.
7. Under the Agreement, the individual defendants became shareholders of Warpath.

8. In the Agreement, the defendants expressly agreed that "the final holdings" of stock in Warpath consist of Ballard owning 20,000 of the outstanding 100,000 shares of Warpath, or 20% of Warpath.

9. Further, in the Agreement, the defendants agreed that the defendant Tim Roberson would "provide the necessary capital to obtain long term financing on the project" and that Ballard would not be required to sign any personal guarantees to obtain financing by the corporation.

10. After entering into the Agreement, the individual defendants elected themselves the directors of Warpath.

11. At a directors meeting on May 1, 2008, the individual defendants passed a motion purportedly to authorize the issuance of 900,000 additional shares of Warpath Treasury Stock in order to raise capital, pay expenses, and offer employee incentives, and purportedly authorized Warpath to file the necessary paper work purportedly to authorize the issuance of an additional 900,000 shares. At a shareholders meeting on the same day, the individual defendants purportedly approved the issuance of the additional 900,000 shares. This action is in breach of the Agreement.

12. Further, if these shares are issued and sold or otherwise transferred to shareowners, Ballard's percentage ownership in Warpath would be reduced to 2%, thus breaching the Agreement.

13. Further, the defendants have breached the Agreement in that the defendant Tim Roberson has not provided the necessary capital to obtain long term financing and instead the defendants have begun the process to sell Warpath stock, contrary to the express terms of the Agreement.

14. The actions of the individual defendants and the action of the defendant Warpath, purportedly authorized individually and collectively, are in direct violation of the Agreement.

FOR A CAUSE OF ACTION

15. The defendants have breached the Agreement.

16. The proposed issuance of stock by the defendant Warpath will cause Ballard irreparable harm and Ballard has no adequate remedy at law.

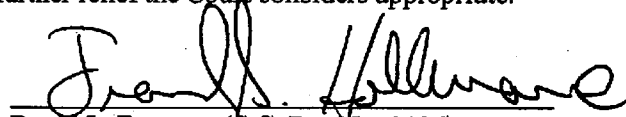
17. A temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants are in the public interest and would not result in an undue burden on the defendants.

18. Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of Warpath.

19. Ballard is entitled to the costs of this Action.

WHEREFORE, Ballard asks that the Court:

1. Issue a temporary and a permanent injunction barring the issuance of stock in the defendant Warpath by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of the defendant Warpath;
2. Award him costs;
3. Award him whatever further relief the Court considers appropriate.



David L. Freeman (S.C. Bar No. 2126)
Frank S. Holleman (S.C. Bar No. 2564)
Hannah R. Metcalfe (S.C. Bar No. 73046)
Wyche, Burgess, Freeman & Parham, PA
44 E. Camperdown Way
P.O. Box 728 (29602-0728)
Greenville, SC 29601
Phone: 864-242-8200
Facsimile: 864-235-8900
Email: dfreeman@wyche.com;
fholleman@wyche.com; hmetcalfe@wyche.com

Dated: 7/30/08
Greenville, South Carolina

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

STOCK PURCHASE
AGREEMENT

This Agreement made and entered into this 29th day of May, 2007 by and between Andy Ballard, hereinafter referred to as *Ballard*, Tim Roberson, hereinafter referred to as *Roberson*, Rick Thoennes, hereinafter referred to as *Thoennes*, Rick Thoennes III, hereinafter referred to as *Thoennes III* and Warpath Development, Inc, hereinafter referred to as *Warpath*.

WITNESSETH

Whereas, Warpath is a South Carolina corporation presently solely owned by Ballard;
and

Whereas, Warpath is the holder of a lease on property located at Lake Keowee and is
desirous of developing the property; and

Whereas, Roberson, Thoennes and Thoennes III are in the business of property
development and are desirous of being involved in the development of the project with Ballard
and Warpath; and

Whereas, Ballard wishes to convey to the other parties 80% of the corporation in
exchange for the purchase of one half of his stock plus an additional 60,000 shares; and

Now Therefore for and in consideration of the monetary sum stated herein and other
valuable consideration the parties hereto agree as follows:

1. The group of Roberson, Thoennes and Thoennes III will pay to Ballard upon
closing the sum of \$1,000,000.00 in exchange for 20,000 shares of Ballard's
40,000 shares and will receive from the corporation additional shares so that
Ballard will hold 20% of the stock and the other 80% will be held by Roberson,
Thoennes and Thoennes III when all shares are finally issued. When the new
stock is issued the final holdings will be as follows:

Roberson	40,000 shares
Thoennes	20,000 shares
Thoennes III	20,000 shares
Ballard	20,000 shares

Handwritten signatures and initials:
MBA
RFB
K
[initials]

2. In addition to the above the corporation will pay Ballard \$100,000.00 upon the grand opening of the Marina. An additional \$50,000.00 will be paid one year after said grand opening. Grand Opening being defined as "when the Marina opens for business."
3. Ballard warrants and represents that he holds a lease with Duke Power and the necessary approvals from Duke Power and Pickens County in order to build the development per conceptual plans for Warpath Landing. Final permits must be obtained to move forward.
4. Ballard agrees to execute a separate agreement with Warpath defining his duties in the project development which shall include but not be limited to securing dock permits, building permits, hotel leases, restaurant leases, engineering services, architectural services and any other service deemed necessary and appropriate to complete the conceptual plan for Warpath Landing. If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1,000,000.00 payment will be refunded, \$250,000.00 will be refunded within 90 days and the balance within 6 months after it is determined the permits cannot be obtained.
5. Thoennes and Thoennes III will execute an agreement with Warpath defining their respective duties, including but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate.
6. Roberson agrees to provide the necessary capital to obtain long term financing on the project. Ballard, Thoennes and Thoennes III will not receive any dividend or distribution of profit until all capital contributions of Roberson have been repaid.
7. Ballard will not be required to sign any personal guarantees to obtain financing by the corporation.
8. The parties agree that it will be necessary at a subsequent date to execute additional documents to give full validity to this Agreement and that they will mutually cooperate with each other in that regard.
9. Ballard further represents and warrants that Warpath is in good standing and that he has authority to enter into this Agreement and that Warpath has no liabilities outstanding.

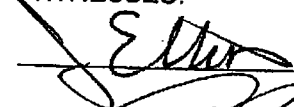
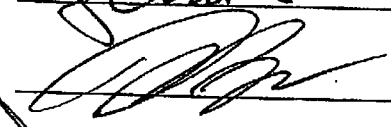
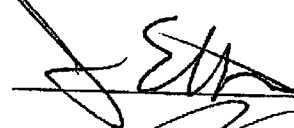
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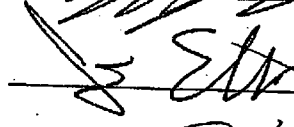
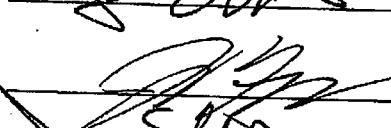
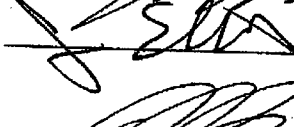
10. This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.

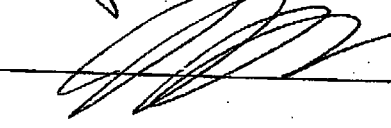
11. No part of this Agreement may be assigned without written consent of all parties.

In witness whereof the parties have set their had and seal the day first above written.

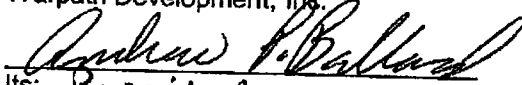
WITNESSES:

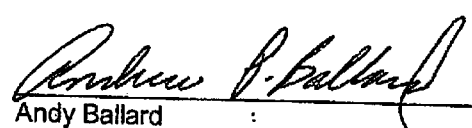




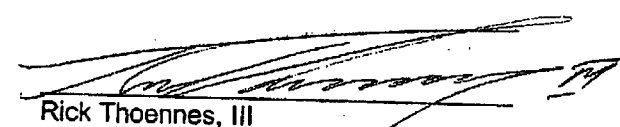



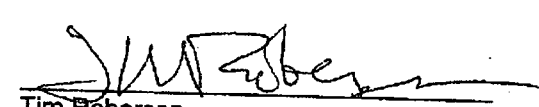
Warpath Development, Inc.


Its: President


Andy Ballard


Rick Thoennes


Rick Thoennes, III


Tim Roberson

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Andrew P. (Andy) Ballard,

Plaintiff

vs.

2008 JUL 30

4: 20

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2008- CP - 23 - 5139

Tim Roberson, Rick Thoennes, Rick Thoennes III,
And Warpath Development, Inc.,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
Defendant(s)

(Please Print)

Submitted By: Frank S. Holleman III/Hannah R. Metcalfe

Address: Wyche, Burgess, Freeman & Parham P.A.

Post Office Box 728

Greenville, SC 29602

SC Bar #: 2564/73046

Telephone #: 864-242-8200

Fax #: 864-235-8900

Other:

E-mail: fholleman@wyche.com/hmetcalfe@wyche.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199) <u>Interpleader Action</u>	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Sexual Predator (510) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture (840) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650)		

Submitting Party Signature:

Date: July 30, 2008

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2008 SEP 25 P 12:00

Andrew P. (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development, Inc.,

Plaintiff,

vs.

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc.,

Defendants.

CLERK
CLERK
CLERK
CLERK

CASE NO.: 2008-CP-23-5739

**FIRST AMENDED COMPLAINT
(JURY TRIAL)**

The plaintiff, Andrew P. (Andy) Ballard ("Ballard"), complaining of the defendants, alleges as follows:

1. Ballard is a citizen and resident of Greenville County, South Carolina.
2. The defendants Tim Roberson, Rick Thoennes, and Rick Thoennes III are citizens and residents of Greenville County, South Carolina.
3. The defendant Warpath Development, Inc. ("Warpath"), is a South Carolina corporation with its records located in Greenville County, South Carolina. The principal asset of Warpath is a lease on property located at Lake Keowee in Pickens County, South Carolina, and associated assets. Warpath is made a defendant herein solely for the purpose of ensuring the effectiveness of the injunctive relief sought in the first and tenth causes of action set out below.
4. Warpath has been working toward developing a marina on the property located on Lake Keowee.
5. Ballard and the defendants are parties to a Stock Purchase Agreement, dated May 29, 2007, attached hereto and incorporated herein (the "Agreement").

6. Prior to the Agreement, Ballard was the sole shareholder of Warpath. Ballard created Warpath and obtained the lease for Warpath for the property on Lake Keowee where the marina is to be located.

7. Under the Agreement, the individual defendants became shareholders of Warpath.

8. Under the Agreement, the individual defendants purchased 20,000 shares of Warpath owned by Ballard for One Million Dollars (\$1,000,000) that was paid to Ballard. The defendants received an additional 60,000 shares of Warpath issued to them in exchange for the other and additional promises and commitments made by them to take certain actions to further the business, financing, development, and operations of Warpath.

9. In the Agreement, the defendants expressly agreed that "the final holdings" of stock in Warpath consist of Ballard owning 20,000 of the outstanding 100,000 shares of Warpath, or 20% of Warpath.

10. Further, in the Agreement, the defendants agreed that the defendant Tim Roberson would "provide the necessary capital to obtain long term financing on the project" and that Ballard would not be required to sign any personal guarantees to obtain financing by the corporation.

11. Further, in the Agreement, the defendants agreed that the defendants Rick Thoennes and Rick Thoennes III "will execute an agreement with Warpath defining their respective duties, including, but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate."

12. After entering into the Agreement, the individual defendants became owners of 80% of the stock of Warpath. Further, the individual defendants decided to have Warpath issue additional stock to benefit them and improve their return on investment. They also conspired together and put together and executed a plan to force Ballard out of Warpath.

13. At a stockholders meeting on May 1, 2008, the individual defendants elected themselves as the three directors of Warpath and did not re elect Ballard as a director. They then held a meeting of the Board of directors and passed a motion purportedly to authorize the issuance of 900,000 additional shares of Warpath Treasury Stock in order to raise capital, pay expenses, and offer employee incentives, and purportedly authorized Warpath to file the necessary paper work purportedly to authorize the issuance of an additional 900,000 shares. This motion was then presented to the shareholders, and in the shareholders meeting the individual defendants purportedly approved the issuance of the additional 900,000 shares. This action is in breach of the Agreement.

14. Further, if these shares are issued and sold or otherwise transferred to shareowners, Ballard's percentage ownership in Warpath would be reduced to 2%, thus breaching the Agreement.

15. Further, these actions are in violation of Warpath's Articles of Incorporation. Warpath's Articles of Incorporation authorize the issuance of 100,000 shares.

16. Further, these actions were designed to harm Ballard, to force him out of Warpath, and to benefit the individual defendants.

17. Further, the individual defendants have breached the Agreement in that the defendant Tim Roberson has not provided the necessary capital to obtain long term financing

and instead the defendants have begun the process to sell additional Warpath stock, contrary to the express terms of the Agreement.

18. Further, the individual defendants have made clear that they have not fulfilled their promises and commitments under the Agreement, have made clear that they will not do so, and/or, upon information and belief, are not able to do so.

19. The actions and inactions of the individual defendants, including their planned action of the defendant Warpath with respect to the issuance of the stock, purportedly authorized individually and collectively, are in direct violation of the Agreement.

20. The individual defendants have also acted in bad faith.

FOR A FIRST CAUSE OF ACTION

21. The individual defendants have breached the Agreement.

22. The proposed issuance of stock by the defendant Warpath will cause Ballard irreparable harm and Ballard has no adequate remedy at law.

23. A temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants are in the public interest and would not result in an undue burden on the defendants.

24. Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of Warpath.

25. Ballard is entitled to the costs of this Action.

FOR A SECOND CAUSE OF ACTION

26. The actions taken by the individual defendants are in violation of Warpath's Articles of Incorporation.

27. Ballard is entitled to a temporary and a permanent injunction against the defendants barring the issuance of stock by the defendants beyond the 100,000 shares already authorized and issued, in violation of Warpath's Articles of Incorporation.

28. Ballard is entitled to the costs of this Action.

FOR A THIRD CAUSE OF ACTION

29. The individual defendants have breached the Agreement.

30. The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them.

31. The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath.

32. The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breaches of the Agreement.

FOR A FOURTH CAUSE OF ACTION

33. The individual defendants have committed anticipatory breaches of the Agreement.

34. The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them.

35. The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath.

36. The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their anticipatory breaches of the Agreement.

FOR A FIFTH CAUSE OF ACTION

37. The individual defendants have breached the covenant of good faith and fair dealing.

38. The breaches by the individual defendants have reduced and will reduce the value of Ballard's stock and have resulted and will result in delays in Ballard receiving economic benefit from his interest in Warpath.

39. The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breach of the covenant.

FOR A SIXTH CAUSE OF ACTION

40. The individual defendants have breached the covenant of good faith and fair dealing.

41. Ballard is entitled to recover his damages, plus costs.

FOR A SEVENTH CAUSE OF ACTION

42. The individual defendants have breached the Agreement.

43. The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them.

44. Ballard is entitled to recover his damages for these breaches, plus interest and costs.

FOR AN EIGHTH CAUSE OF ACTION

45. The individual defendants have committed anticipatory breaches of the Agreement.

46. The individual defendants have not fulfilled and have breached their promises and commitments that they made in the Agreement, they have made clear that they do not intend to fulfill them, and/or, upon information and belief, they are not capable of fulfilling them.

47. Ballard is entitled to recover his damages for these anticipatory breaches, plus interest and costs.

FOR A NINTH CAUSE OF ACTION

48. In taking action to force Ballard out of the company and in taking action to authorize the issuance of additional shares of Warpath, as part of that effort, to dilute Ballard's ownership in Warpath, and to benefit themselves, and by breaching the Agreement and its covenant of good faith and fair dealing, the individual defendants breached their fiduciary duties owed by them as directors of Warpath to Ballard, a Warpath shareholder, in violation of S.C. Code Ann. § 33-8-300.

49. The individual defendants acted intentionally, willfully, wantonly, and grossly negligently in breaching their fiduciary duties owed to Ballard.

50. Ballard is entitled to recover actual and punitive damages from the individual defendants, interest, and costs.

FOR A TENTH CAUSE OF ACTION

51. Tim Roberson has been and is the President-CEO of Warpath, Rick Thoennes, III, is the Vice President, and Rick Thoennes is the Secretary-Treasurer. The individual defendants are all the officers of Warpath.

52. In taking action to force Ballard out of the company and in taking action to authorize the issuance of additional shares of Warpath, as part of that effort, to dilute Ballard's ownership in Warpath, and to benefit themselves, and by breaching the Agreement and its covenant of good faith and fair dealing, the individual defendants breached their fiduciary duties owed by them as officers of Warpath to Ballard, a Warpath shareholder, in violation of S.C. Code Ann. § 33-8-420.

53. The individual defendants acted intentionally, willfully, wantonly, and grossly negligently in breaching their fiduciary duties owed to Ballard.

54. Ballard is entitled to recover actual and punitive damages from the individual defendants, interest, and costs.

FOR AN ELEVENTH CAUSE OF ACTION

55. Tim Roberson, Rick Thoennes, and Rick Thoennes, III, own are majority shareholders of Warpath and own 80% of its stock.

56. In taking action to force Ballard out of the company and in taking action to authorize the issuance of additional shares of Warpath, as part of that effort, to dilute Ballard's ownership in Warpath, and to benefit themselves, and by breaching the Agreement and its covenant of good faith and fair dealing, the individual defendants breached their fiduciary duties owed by them as majority shareholders of Warpath to Ballard, a minority Warpath shareholder.

57. The individual defendants acted intentionally, willfully, wantonly, and grossly negligently in breaching their fiduciary duties owed to Ballard.

58. Ballard is entitled to recover actual and punitive damages from the individual defendants, interest, and costs.

FOR A TWELFTH CAUSE OF ACTION

59. Under S.C. Code Ann. §§ 33-14-300 and 310, the individual defendants have acted and are acting in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial to Ballard.

60. Ballard asks that the Court direct the individual defendants, jointly and severally, to purchase his stock at fair value, pursuant to S.C. Code Ann. §§ 33-14-310 (d) (4), and that the defendants not issue any additional Warpath stock pending that purchase, pursuant to S.C. Code Ann. §§ 33-14-310 (d) (3).

61. Alternatively, Ballard asks that the Court direct the defendants, jointly and severally, not to issue any additional Warpath stock, pursuant to S.C. Code Ann. §§ 33-14-310 (d) (3).

FOR A THIRTEENTH CAUSE OF ACTION

62. This is a derivative claim, brought pursuant to Rule 23 (b) (1) of the South Carolina Rules of Civil Procedure, to enforce a right of Warpath.

63. Ballard is and has been a shareholder of Warpath since Warpath came into existence. Ballard was a shareholder at the time of the transactions of which he complains.

64. A pre-filing demand upon the Warpath directors or shareholders is futile and useless because:

(a) The individual defendants constitute all of the directors of Warpath;

(b) The individual defendants constitute all of the shareholders of Warpath other than Ballard and currently own 80% of the outstanding shares;

(c) The claims asserted herein are claims brought against the individual defendants, and the individual defendants have asserted in this litigation that they are not in violation of the Agreement, as alleged herein;

(d) The breaches of the Agreement alleged herein are breaches alleged against the individual defendants;

(e) In order to pursue this claim, the individual defendants would have to sue themselves;

(f) There is no reason to think that the individual defendants would bring this claim against themselves, and in fact the individual defendants have asserted that they have no liability under the Agreement, as set out in their Answer and Counterclaim and the deposition of Tim Roberson.

65. The defendants are parties to a Stock Purchase Agreement, dated May 29, 2007, attached hereto and incorporated herein (the "Agreement").

66. Under the Agreement, the individual defendants purchased 20,000 shares of Warpath owned by Ballard for One Million Dollars (\$1,000,000) that was paid to Ballard. The defendants received an additional 60,000 shares of Warpath issued to them in exchange for the other and additional promises and commitments made by them to take certain actions to further the business, financing, development, and operations of Warpath.

67. In the Agreement, the individual defendants agreed that the defendant Tim Roberson would "provide the necessary capital to obtain long term financing on the project"

and that Ballard would not be required to sign any personal guarantees to obtain financing by the corporation.

68. Further, in the Agreement, the defendants agreed that the defendants Rick Thoennes and Rick Thoennes III "will execute an agreement with Warpath defining their respective duties, including, but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate."

69. Further, the individual defendants have breached the Agreement in that the defendant Tim Roberson has not provided the necessary capital to obtain long term financing and instead the defendants have begun the process to sell additional Warpath stock, contrary to the express terms of the Agreement.

70. Further, the individual defendants have not fulfilled their promises and commitments under the Agreement, have made clear that they will not do so, and/or, upon information and belief, are not able to do so.

71. The actions and inactions of the individual defendants, purportedly authorized individually and collectively, violate the Agreement.

72. The individual defendants have also acted in bad faith.

73. The individual defendants have breached the Agreement and have committed anticipatory breaches of the Agreement.

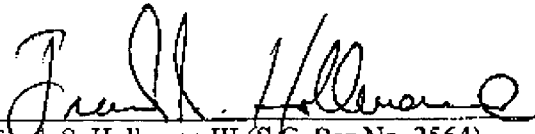
74. Ballard is a party to the Agreement and alleges that he has a right to bring these claims individually as set out in the Second, Third, and Fourth Causes of Action, set out above.

75. Alternatively, Ballard brings these claims derivatively to enforce Warpath's rights under the Agreement.

76. The individual defendants must return the 60,000 shares of Warpath that they received under the Agreement, as restitution for their breaches and anticipatory breaches of the Agreement.

WHEREFORE, Ballard asks that the Court:

1. Issue a temporary and a permanent injunction barring the issuance of stock in the defendant Warpath by the defendants that would reduce Ballard's final holdings in Warpath to less than 20% of the stock of the defendant Warpath;
2. Issue a temporary and a permanent injunction barring the issuance of stock in the defendant Warpath by the defendants that would increase the number of shares beyond the 100,000 authorized by Warpath's Articles of Incorporation;
3. Order that the individual defendants return their 60,000 shares in Warpath, as restitution;
4. Award Ballard actual and punitive damages;
5. Order that the individual defendants, jointly and severally, purchase his shares for fair value and order that the defendants, pending such purchase, not issue additional shares of Warpath or, alternatively, order that the defendants not issue additional shares of Warpath;
6. Alternatively, as a remedy for the derivative claim, order that the individual defendants return their 60,000 shares in Warpath, as restitution;
7. Award him interest and costs;
8. Award him whatever further relief the Court considers appropriate.



Frank S. Holleman III (S.C. Bar No. 2564)

Hannah R. Metcalfe (S.C. Bar No. 73046)

Wyche, Burgess, Freeman & Parham, PA

44 E. Camperdown Way

P.O. Box 728 (29602-0728)

Greenville, SC 29601

Phone: 864-242-8200

Facsimile: 864-235-8900

Email: fholleman@wyche.com;

hmetcalfe@wyche.com

Dated: 8/25/2009
Greenville, South Carolina

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

STOCK PURCHASE
AGREEMENT

This Agreement made and entered into this 29th day of May, 2007 by and between Andy Ballard, hereinafter referred to as *Ballard*, Tim Roberson, hereinafter referred to as *Roberson*, Rick Thoennes, hereinafter referred to as *Thoennes*, Rick Thoennes III, hereinafter referred to as *Thoennes III* and Warpath Development, Inc, hereinafter referred to as *Warpath*.

WITNESSETH

Whereas, Warpath is a South Carolina corporation presently solely owned by Ballard;
and

Whereas, Warpath is the holder of a lease on property located at Lake Keowee and is desirous of developing the property; and

Whereas, Roberson, Thoennes and Thoennes III are in the business of property development and are desirous of being involved in the development of the project with Ballard and Warpath; and

Whereas, Ballard wishes to convey to the other parties 80% of the corporation in exchange for the purchase of one half of his stock plus an additional 60,000 shares; and

Now Therefore for and in consideration of the monetary sum stated herein and other valuable consideration the parties hereto agree as follows:

1. The group of Roberson, Thoennes and Thoennes III will pay to Ballard upon closing the sum of \$1,000,000.00 in exchange for 20,000 shares of Ballard's 40,000 shares and will receive from the corporation additional shares so that Ballard will hold 20% of the stock and the other 80% will be held by Roberson, Thoennes and Thoennes III when all shares are finally issued. When the new stock is issued the final holdings will be as follows:

Roberson	40,000 shares
Thoennes	20,000 shares
Thoennes III	20,000 shares
Ballard	20,000 shares

Handwritten signatures and initials:
CMB
RFB
K
E

2. In addition to the above the corporation will pay Ballard \$100,000.00 upon the grand opening of the Marina. An additional \$50,000.00 will be paid one year after said grand opening. Grand Opening being defined as "when the Marina opens for business."
3. Ballard warrants and represents that he holds a lease with Duke Power and the necessary approvals from Duke Power and Pickens County in order to build the development per conceptual plans for Warpath Landing. Final permits must be obtained to move forward.
4. Ballard agrees to execute a separate agreement with Warpath defining his duties in the project development which shall include but not be limited to securing dock permits, building permits, hotel leases, restaurant leases, engineering services, architectural services and any other service deemed necessary and appropriate to complete the conceptual plan for Warpath Landing. If Ballard is unable to obtain the Marina and Dock permits per the conceptual plan the \$1,000,000.00 payment will be refunded, \$250,000.00 will be refunded within 90 days and the balance within 6 months after it is determined the permits cannot be obtained.
5. Thoennes and Thoennes III will execute an agreement with Warpath defining their respective duties, including but not limited to development work, execution of loan documents, assistance with proformas, assistance with obtaining permanent financing and other such service as may be appropriate.
6. Roberson agrees to provide the necessary capital to obtain long term financing on the project. Ballard, Thoennes and Thoennes III will not receive any dividend or distribution of profit until all capital contributions of Roberson have been repaid.
7. Ballard will not be required to sign any personal guarantees to obtain financing by the corporation.
8. The parties agree that it will be necessary at a subsequent date to execute additional documents to give full validity to this Agreement and that they will mutually cooperate with each other in that regard.
9. Ballard further represents and warrants that Warpath is in good standing and that he has authority to enter into this Agreement and that Warpath has no liabilities outstanding.

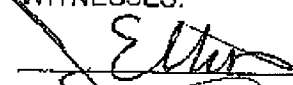
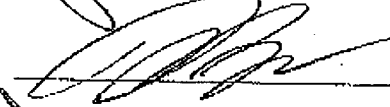
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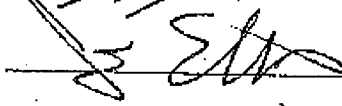
10. This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.

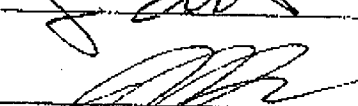
11. No part of this Agreement may be assigned without written consent of all parties.

In witness whereof the parties have set their had and seal the day first above written.

WITNESSES:

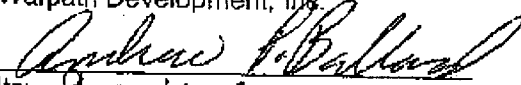



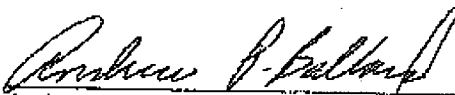





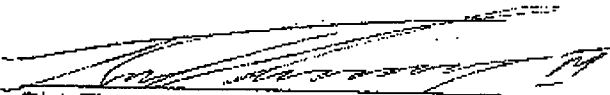


Warpath Development, Inc.


Its: President


Andy Ballard


Rick Thoennes


Rick Thoennes, III


Tim Roberson

ESTATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
JUL 23 2009 P 12:00

Andrew P. (Andy) Ballard, individually, and
derivatively on behalf of Warpath
Development, Inc.,

Plaintiff,

vs.

Tim Roberson, Rick Thoennes, Rick Thoennes
III, and Warpath Development, Inc.,

Defendants.

CLERK OF COURT
JUL 23 2009

CASE NO.: 2008-CP-23-5739

VERIFICATION

Personally appeared before me, Andrew P. Ballard, who, first being duly sworn states that he is the Plaintiff in this action, that he has read the First Amended Complaint and states that the allegations of the Thirteenth Cause of Action are true, except for any matters which are alleged on information and belief, and he believes them to be true to the best of his knowledge.

Andrew P. Ballard
Andrew P. Ballard

Sworn to this 24th day of
August 2009

Susan B. Hahn

Notary Public for South Carolina

My Commission expires: 2/21/2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case Number; 2008-CP-23-5739

-----x
Andrew P. Ballard, :
Plaintiff, :
vs. :
Tim Roberson, Rick Thoennes, Rick :
Thoennes III and Warpath :
Development :
Defendants :

FILED-CLERK OF COURT
CLERK OF COURT
PAUL B. WILKINSON
2016 AUG 29 PM 2 50

-----x
**RECEIVERS' MOTION TO COMPEL THE TRANSFER OF DEFENDANT TIMOTHY
ROBERSONS' MEMBERSHIP INTEREST IN TRG, LLC PENDING COMPLETION OF
THE APPEAL**

Michael F. O'Shea, duly appointed, qualified and acting as Receiver in the above captioned matter, moves this Court for an order compelling Timothy Roberson to transfer the legal ownership interest of Defendant Timothy Roberson in TRG, LLC pending completion of the appeal in this matter.

Background

This is a shareholder oppression case filed by the Plaintiff in July 2008. As a result of a Rule To Show Cause hearing on April 23, 2014, Forensic Research Group, Inc. and its' principal, Michael F. O'Shea, were appointed Receiver in this matter. The Receiver was directed to pursue discovery from the defendants and third parties, require the production of documents he deemed relevant and to take possession of the defendant's assets and secure them pending the outcome of an appeal filed by the defendants. During July 2015 the Appeals Court rendered an opinion slightly reducing the amount of the judgement in question. Subsequent to that appeal and decision, the Defendants

requested that the matter be heard by the South Carolina Supreme Court. This request has been pending since January 2016.

Receiver's Actions

Defendants' Personal Expenses

Since 01 May 2014 I have required each defendant to provide me with a list of essential personal bills that they propose to pay. After review and approval they have used social security funds deposited into their one remaining checking account to pay the approved bills. In both cases the required payments have exceeded their social security payments and, in both cases, the defendant has access to other income from sources known to me.

In the case of Timothy Roberson, any monthly payments in excess of his Social Security payment, which is every month by three to five thousand dollars, come from funds received from TRG, LLC, an entity that owns and leases real property in Greenville County. Documents produced to the Receiver indicates that Timothy Roberson, personally, owns approximately 48% of this entity making him the largest member with the next largest ownership representing approximately 16% with the balance owned by 5 additional members.

TRG, LLC is a South Carolina entity and the books and records are kept by and in the custody of a North Carolina accountant, David Martindale, who is also a member of TRG, LLC. The property owned by the entity was the former headquarters of Mr. Roberson's former business which he sold to the company currently leasing this property. The current monthly lease payment is approximately \$62,000 per month and there is currently no mortgage attaching to this property. The entity regularly maintains bank balances in excess of \$200,000 and Mr. Roberson's equity position is approximately \$1,500,000.

Since mid-2014, whenever Mr. Roberson requires funds in the receiver account to meet his monthly expenses, he requests that Mr. Martindale send a check, usually in the amount of \$30,000, to me for deposit in the account. In addition to the monthly requirements Mr. Roberson has had one instance where he required a \$26,000 payment to a bank to bring his mortgage current and, in the summer of 2015, he required another \$12,000 to pay down the mortgage balance before the bank would renew the mortgage. In each case he requested that the funds be provided to me from TRG, LLC. All of these transfers, which currently total \$190,800.00, have been booked as "loans" to Mr. Roberson rather than being treated as distributions. I believe that one reason for this treatment is to avoid distribution tax given that Mr. Roberson currently

owes some \$100,000 in taxes. I have met with the IRS concerning this obligation and the treatment of the loans.

The net result of the foregoing is that Mr. Roberson continues to exercise control of this asset, the largest of his assets, and the Receiver is left to ask that his account is funded only to the extent necessary to pay several months of bills, the largest portion of which is to service the debt, HOA expenses and utilities of his residence which is currently the subject of a foreclosure action and has a negative equity of approximately \$180,000.

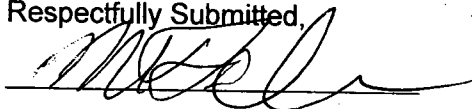
Additionally, Defendant Roberson currently has a 1/3 membership interest in a South Carolina entity known as Greenville Gateway Developers, LLC. This entity owns a vacant commercial property in Greenville, SC which is currently being offered for sale for approximately \$3,000,000. Further, the three members Greenville Gateway Developers, LLC are each 1/3 members of a South Carolina entity known as Sozo7, LLC. Sozo7, LLC appear to be the beneficial owner of a foreign, Anguilla, corporation which in turn owns a condominium in Anguilla which is currently being offered for sale for some \$3,000,000.

Relief Requested

My charge as Receiver is to take possession of, and preserve the value, of the assets of the Defendants. I am concerned that substantial monies from TRG, LLC are being used to pay and pay down the mortgage attaching on Mr. Roberson's residence, even though discussions with the bank indicate that the value of the property is substantially less, by more than \$150,000, than the balance due and that there is a pending foreclosure action involving this property. I am further troubled by the fact that the funds provided to Mr. Roberson by TRG, LLC, at his direction, are being booked as loans rather than distributions, an action that raises questions about the tax owing on these "loans" once converted. In fact, I have had a meeting with an agent from the IRS who has expressed the same concerns.

Given that the Receivership Order contemplated that the Receiver "take immediate control of Defendant's assets and exercise full control over Defendant's assets" The Receiver respectfully requests that the Court enter an order directing the turnover of Defendant Roberson's membership interest in TRG, LLC, Greenville Gateway Developers, LLC and SOZO7, LLC.

Respectfully Submitted,



Michael F. O'Shea – Receiver

Forensic Research Group, Inc.
110 RENAISSANCE CIRCLE
MAULDIN, SC 29662
864-228-2222
MFO@FRGI.NET

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLEIN THE COURT OF COMMON PLEAS
12th JUDICIAL CIRCUITCASE NO.: 2008 -CP-23 - 5739ANDREW P. BALLARD

PAUL B. BAKER, CLERK

2015 AUG Plaintiff,) 2 50

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

TIM ROBERTSON, vs. RICK THOENNES
RICK THOENNES III & WARPATH DEVELOPMENT
 Defendant.)

Plaintiff's Attorney: <u>WALLACE LEIGHTSY</u> , Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>JOSH HOWARD</u> , Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____																
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information Nature of Motion: <u>TRANSFER OF ASSETS</u> Estimated Time Needed: <u>30 MIN</u> Court Reporter Needed: ☐ YES/ ☐ NO																	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.																	
Signature of Attorney for ☐ Plaintiff/ ☐ Defendant _____, 20____ Date submitted _____																	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) <table border="0"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☐ Motion for Publication</td> <td>☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td>☐ Proposed order submitted at request of the court; or,</td> <td>reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Execution (Rule 69, SCRPC)	☐ Sexually Violent Predator Act	☐ Motion for Stay in Bankruptcy	☐ Motion for Publication	☐ Proposed order submitted at request of the court; or,	☐ Proposed order submitted at request of the court; or,	reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter: _____		☐ Other: _____	
☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party																
☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief																
☐ Indigent Status	☐ Motion for Execution (Rule 69, SCRPC)																
☐ Sexually Violent Predator Act	☐ Motion for Stay in Bankruptcy																
☐ Motion for Publication	☐ Proposed order submitted at request of the court; or,																
☐ Proposed order submitted at request of the court; or,	reduced to writing from motion made in open court per judge's instructions																
Name of Court Reporter: _____																	
☐ Other: _____																	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____, 20____																
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____, 20____																	
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____																	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

FOR THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,

Case Number: 2008-CP-23-5739

Plaintiff,

**PLAINTIFF'S MOTION TO MODIFY
ORDER FOR RECEIVERSHIP**

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

Plaintiff Andrew Ballard moves the Court to modify this Court's Order Appointing Receiver dated 23 April, 2014. ("Order Appointing Receiver", attached as Exhibit A). Plaintiff respectfully requests that this Court modify or supplement the Order Appointing Receiver in the following particulars:

1. The Receiver henceforth be directed by the Court to perform his duties solely in aid of execution pursuant to S.C. Code Ann. § 15-65-10(2) § 15-65-10 (3), as the judgment is wholly unsatisfied and Defendants have failed to apply their assets toward satisfaction of the Judgment. Any other actions by the Receiver will be ancillary to these roles.
2. The Receiver be directed to no longer pay living expenses to the Defendants.
3. The Receiver be empowered to pay over to the Plaintiff assets now in his possession or control or hereafter coming into Receiver's possession and control, which assets shall be applied by Plaintiff toward the satisfaction of Plaintiff's judgment.

4. The Court continue to afford the Receiver all the powers and authority previously granted him in the Order Appointing Receiver so as to enable him to carry out his duties, including the continued right to seize assets of the Defendants and turn them over to Plaintiff, to be applied toward satisfaction of the judgment.
5. The Court direct that all the Receiver's fees and costs going forward be directly paid from the assets of the Defendants.
6. As and if necessary, the Court grant the Receiver such additional powers as may be necessary to perform his duties.

The basis for this motion is that the Judgment has been affirmed on appeal and this case is now final (See Remittitur attached as Exhibit B) and Plaintiff is entitled to enforce his judgment as provided under South Carolina law. Assets are no longer required to be held by the Receiver, but may be paid over to Plaintiff to be applied toward payment of Plaintiff's judgment. Defendants have exhausted their appeals.

This motion is supported by the appropriate authority; this Court's orders; the record before the Court in this action; any supporting memorandum that may be filed at or before the hearing on this motion, and any affidavits or materials that may be provided at or prior to the hearing on this motion.

Respectfully submitted,

s/ William M. Wilson III

Wallace K. Lightsey (S.C. Bar No. 6476)

William M. Wilson III (S.C. Bar No. 15808)

Amos A. Workman (S.C. Bar No. 6231)

WYCHE, P. A.

44 E. Camperdown Way

Greenville, SC 29601

Telephone: 864-242-2800

Facsimile: 864-235-8900

E-Mail: wlightsey@wyche.com

bwilson@wyche.com
aworkman@wyche.com

Attorneys for Plaintiff Andrew P. (Andy) Ballard

September 21, 2016

Certificate of Consultation

The undersigned hereby affirms that, prior to filing the foregoing motion, he consulted with opposing counsel and attempted in good faith to resolve the matter at issue in this motion.

s/ Wallace K. Lightsey
Wallace K. Lightsey

EXHIBIT A

Order Appointing Receiver

FILED-CLERK OF THE COURT OF COMMON PLEAS
GREENVILLE CO. S.C.
COUNTY OF GREENVILLE
PAUL B. WICKER
2014 APR 23 AM 11 32
THE THIRTEENTH JUDICIAL CIRCUIT

Andrew P. (Andy) Ballard,

Case Number: 2008-CP-23-5739

Plaintiff,

ORDER APPOINTING RECEIVER

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,

Defendants.

This matter came before the Court for a hearing upon the Rule To Show Cause issued to the defendants and their attorney, Joshua Howard. The Rule was heard by the Court on April 23, 2014. Part of the Rule directed the defendants to show cause why a receiver should not be appointed to ascertain by investigation, marshal and protect assets and income of the defendants.

Upon reviewing the record, the evidence, and the applicable law and hearing statements and representations of counsel, I find that a receiver should be appointed with authority to pursue discovery from the defendants and third parties, require the production of documents and other evidence, and take possession of defendants' assets and secure them while defendants' appeal is pending, upon threat of contempt and sanctions by this Court for willful failure to cooperate with the receiver.¹

¹ While the findings of fact contained in this Order apply to all defendants, the relief granted herein is not entered against defendant Rick Thoennes III. At the hearing, plaintiff's counsel advised the Court that on December 2, 2011, while the first appeal was pending, defendant Thoennes III filed a petition for bankruptcy with the United States Bankruptcy Court. An order of discharge was entered by that Court on March 26, 2012. Plaintiff disputes that the discharge applies to or affects the Judgment, but has agreed with counsel for Thoennes III to hold further collection efforts against Thoennes III in abeyance until that issue has been resolved by agreement or court order.

Handwritten signature/initials

FINDINGS OF FACT

1. This is a shareholder oppression case, filed by the plaintiff in July 2008. The plaintiff, Andy Ballard, is the founder of the corporate defendant, Warpath Development, Inc., and was its sole owner, officer, and director for a number of years. The company was formed to develop a marina and related properties (such as rental cabins, a hotel, a restaurant, marina store, and the like) on Lake Keowee in the Upstate of South Carolina, and through Mr. Ballard's efforts obtained a potentially perpetual lease from Duke Power Company for the land at the site of the marina. All necessary permits to construct and develop the marina and related properties were obtained by the summer of 2010.

2. Under a Stock Purchase Agreement dated May 29, 2007, defendant Roberson purchased 20,000 shares of Warpath stock directly from Mr. Ballard for \$1 million, and he and the other two individual defendants also received 20,000 shares each from the company in exchange for future services they agreed to provide to the company, as set forth in the Agreement. Mr. Ballard retained ownership of 20,000 shares. Over the course of the year following the execution of their contract, the parties' relationship deteriorated. By October of 2007, the individual defendants began discussions among themselves of how to force Mr. Ballard out of the company. When they began to take steps to do so, Mr. Ballard filed suit in July 2008. The operative pleading, the Amended Complaint filed in August 2009, alleged that the defendants had breached their fiduciary duty to the plaintiff by engaging in majority shareholder oppression, and also sought to require the individual defendants to place in escrow or disgorge the 60,000 shares issued to them by the company, on the ground that they had not provided the services that were the consideration for the shares.

3. On May 4, 2010, following a bench trial, this Court entered an Order finding that the defendants had breached their fiduciary duty and committed oppression of the plaintiff. The Court ordered defendants to buy out the plaintiff's shares at fair value. The defendants appealed.

4. The Supreme Court affirmed this Court's 2010 Order in August of 2012. On remand, this Court held an evidentiary hearing in August of 2013 to determine the fair value of the plaintiff's shares. At the valuation hearing, plaintiff presented undisputed evidence that the conduct of the defendants previously held to constitute shareholder oppression had continued unchanged and unabated up to the time of the hearing.

5. On October 3, 2013, the Court issued an order of judgment (the "Judgment") valuing Warpath at \$7,178,594 and directing defendants jointly and severally to pay 50% of that value (\$3,589,297) to plaintiff to buy out his ownership. The Court gave the defendants a 90-day grace period to arrange for payment of the Judgment. Defendants filed a notice of appeal from the Judgment on December 20, 2013.

6. Defendants have not paid any portion of the Judgment.

7. Plaintiff attempted to execute the Judgment against defendants' assets in Greenville County and Oconee County. The writs of execution in both counties were returned *nulla bona*.

8. On January 7, 2014, defendants filed a motion to stay execution pending appeal. This Court denied that motion by Order dated March 27, 2014. On the same date, the Court issued its Rule To Show Cause.

9. The defendants directly or indirectly own or control assets that are at risk of being wasted, secreted, or diverted while the defendants' appeal is pending.

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10. No other supplementary proceedings are pending against the defendants, and no other receiver of the defendants' property has been appointed.

11. Forensics Research Group, Inc. ("FRG"), and its principal Michael F. O'Shea, are experienced in handling receiverships and financial matters in fiduciary capacities, and FRG is a fit and proper company to act as receiver herein. FRG holds no interest which would interfere with the proper performance of its fiduciary duties as a receiver in this case and is willing to so serve.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.

2. The Judgment was granted in favor of Ballard and has not been satisfied.

3. A receiver may be appointed after judgment to carry the judgment into effect. *See* S.C. Code Ann. § 15-65-10(2).

4. A receiver may be appointed after judgment to dispose of the property according to the judgment. *See* S.C. Code Ann. § 15-65-10(3).

5. A receiver may be appointed after judgment to preserve the judgment debtor's property during the pendency of an appeal. *See* S.C. Code Ann. § 15-65-10(3).

6. A receiver may be appointed after judgment when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment. *See* S.C. Code Ann. § 15-65-10(3).

7. A receiver may be appointed to receive any distributions due to or to become due to the judgment debtor from a limited liability company in which the judgment debtor has a membership interest. *See* S.C. Code Ann. § 33-44-504(a).

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8. South Carolina law otherwise allows for the appointment of a Receiver under the facts of this case.

9. The Court concludes that the plaintiff is entitled to the appointment of a receiver in order to ascertain by investigation and to take possession of and secure assets and income of the defendants until the appeal is resolved.

NOW, THEREFORE, based upon the foregoing findings of fact and the conclusions of law, IT IS THEREFORE ORDERED that:

1. FRG is hereby appointed as Receiver to ascertain by investigation and to take possession of and secure assets and income of the defendants until their appeal of the Judgment is resolved.

2. Immediately following the entry of this Order, and on an ongoing basis as long as this Order remains in effect, defendants shall surrender and deliver possession to FRG of all of the assets and property that they possess, own or control, directly or indirectly, legally or equitably, including all shares of stock of Warpath Development, Inc., and all assets and records of Warpath Development, Inc., and all assets and property that defendants hereafter receive or acquire, directly or indirectly, legally or equitably, while the Order is in effect (all of the foregoing herein referred to as the "Property"), with the exception of property that is exempt from execution or levy (for example, the homestead exemption). As to such exempt property, defendants shall not dispose of or encumber such property beyond the statutory amount of the exemption. If such property is already encumbered such that the owner's equity in the property is less than the amount of the exemption, the owner shall not further encumber or dispose of the property.

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3. Effective as of and from the date of the entry of this Order, all funds or other property that are received by defendants shall be delivered to the Receiver and deposited with a bank of Receiver's choice or otherwise secured by Receiver pending resolution of defendants' appeal.

4. Defendants may request from the Receiver the release of such funds as are required for ordinary living expenses, and the Receiver shall comply with reasonable such requests. Any dispute over such requests shall be brought promptly to the Court.

5. The Receiver will be and hereby is authorized and directed to take immediate possession of defendants' assets and to exercise full control over defendants' assets, provided that Receiver shall not sell or dispose of such assets until further order of this Court, and the Receiver in so doing will have all powers generally available to Receivers under the laws of the State of South Carolina, and will have, among others, the following specific powers:

(a) The power and authority to take possession of property owned or leased by defendants. All parties in possession of any such property are to surrender it to the Receiver upon demand. This property shall include, but not be limited to the following;

- i Real Property
- ii Goods
- iii Inventory
- iv Equipment
- v Chattel Paper and Accounts
- vi Securities and Instruments, including but not limited to Stocks, Bonds, and Promissory Notes
- vii Investment Property
- viii Documents

- ix Deposit Accounts
- x Commercial Tort Claims
- xi Money
- xii Letter of Credit Rights
- xiii General Intangibles
- xiv Supporting Obligations
- xv All Cash or Equivalents, Savings Accounts, Brokerage Accounts, any other bank accounts of defendants;
- xvi All proceeds and products of above

(b) Gather all books and records of defendants, and subpoena or otherwise require production of books and records of third parties, to determine the existence and amount of all defendants' debts and obligations together with all their assets;

(c) To control all bank accounts owned by or for the benefit of defendants. No other person shall have any authority or control over any funds in the accounts, including but not limited to authority or control otherwise disburse funds;

(d) Insurance: With respect to any insurance coverage in existence or obtained, the Receiver shall be named as an additional insured on the policies for the period that the Receiver shall be in possession of the property insured;

(e) Distributions from limited liability companies. The Receiver is hereby authorized to demand and receive any distributions due to or to become due to a defendant from any limited liability company in which the defendant has a direct or indirect membership interest; and any such limited liability company is hereby directed and enjoined, upon receipt of this Order, to make such distribution(s) only to the Receiver while this Order is in effect.

6. Plaintiff and Receiver shall have no obligation to pay for accrued wages, benefit, and taxes, payroll or other, accrued in advance of the date of this Order, whether currently due or owing.

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7. The Receiver will furnish to the Court and to the parties monthly statements itemizing property that has been secured by Receiver pursuant to this Order. Such report will be filed within thirty (30) days after the end of each calendar month, the first such report to be due thirty days after the end of the first month this order is entered and monthly thereafter. The parties to this litigation will be entitled to inspect the books and records of the Receiver concerning assets held by it pursuant to this Order at reasonable times and with reasonable notice.

8. Without further Order of the Court, the Receiver shall be entitled to payment of professional fees and expenses incurred by the Receiver. While the defendants' appeal remains pending, Receiver's fees and expenses shall be paid by plaintiff's counsel. If the Judgment is affirmed in whole or in part, plaintiff's counsel shall be entitled to reimbursement of such payments from the defendants' assets. Receiver's professional fees shall be charged at \$200 per hour for Michael O'Shea's time. All photocopies and facsimile charges along with necessary out-of-pocket expenses (including travel and lodging) will be billed at cost. All fees and expenses of the Receiver shall be accounted for in the Monthly Statement of Operations.

9. The Receiver will have such additional powers as are provided by law and as this Court may from time to time direct.

10. No person or entity shall file suit against the Receiver, plaintiff, or plaintiff's counsel or take any legal action for actions taken in compliance with this Order. All other proceedings by defendants or any creditor of defendants relating to the Judgment or the Property are enjoined.

11. The Receiver shall have no personal liability in connection with any liabilities, obligations, liens or amounts owed to any creditors or claimants of defendants.

12. The Receiver and its employees, agents, and attorneys shall have no personal liability or obligation and shall have no claim asserted against them in connection with the Receiver's actions under this Order.

13. The Receiver may, in its discretion, notify this Court and the parties to this action that the Receivership is not practical, and upon such notice all duties of the Receiver shall terminate except with regard to liabilities which arise prior to the date of the notice. The Court may then appoint a new Receiver to take any and all such other action as it deems appropriate. Receiver shall turn over all of the assets and records secured pursuant hereto to any successor receiver appointed by the Court and shall file a final accounting with the Court.

14. In the event that the defendants fail to immediately turn over their property and other items required by this Order, the appropriate County Sheriff is hereby ordered to take all necessary actions and appropriate force to give full effect to the terms of this Order.

15. All persons who receive notice of this Order are enjoined from interfering with the powers and duties of the Receiver.

16. All providers of insurance with respect to the Property are prohibited and enjoined from cancelling such insurance policies provided that the Receiver pay the applicable premiums for any prospective exposure going forward under the receivership, and such premiums may be paid from assets secured by the Receiver pursuant to this Order.

17. The receiver is not responsible for filing any federal, state, or local tax returns including those relating to any activities during the receivership.

18. The Receiver and the parties to this case may at any time apply to this Court for instructions or orders and for further powers necessary to enable the Receiver to perform the Receiver's duties properly.

19. IT IS FURTHER ORDERED that pending further Order of this Court, the defendants and their respective agents, partners, managers, employees, assignees, successors, representatives, officers, directors, affiliates or related entities and all other persons acting in concert with them who have actual or constructive knowledge of this Order, and their agents and employees, shall not:

A. Commit Waste:

Defendants shall not commit or permit any waste of the Property or any part thereof, or suffer or commit or permit any act on the Property or any part thereof in violation of law, or remove, transfer, encumber or otherwise dispose of any of the Property or the fixtures presently on the Property or any part thereof.

B. Cash or Credit Card Receipts:

Defendants shall not discount or in any other way divert or use any of the monies from the property, including, but not limited to, rents, cash from sales, or credit card receipts.

C. Interfere with Receiver:

Defendants shall not directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession of the Property;

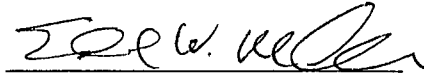
D. Transfer or Encumber the Property:

Defendants shall not expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Property, including, but not limited to, the cash, rents inventory, and fixtures without prior Court Order; and

E. Impair Preservation of Property or Plaintiff's Interest:

Defendants shall not do any act which will, or which will tend to impair, defeat, divert, prevent or prejudice the preservation of the Property, or the preservation of plaintiff's interest in the Property. Defendants are further enjoined from making any payments or transfers of funds or property to or from any affiliates, insiders, directors, officers, family members, or any other person or entity controlled by or otherwise related to any affiliates, insiders, directors, and/or officers.

IT IS SO ORDERED.



Edward W. Miller
Judge, South Carolina Circuit Court

4/23

, 2014

Greenville, South Carolina

EXHIBIT B

Remittitur



RECEIVED
SEP 14 2016

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1880
FAX: (803) 734-1839
www.sccourts.org

September 12, 2016

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: Andrew Ballard v. Tim Roberson
Lower Court Case No. 2008CP2305739
Appellate Case No. 2013-002790

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Joshua L. Howard, Esquire
Wallace K. Lightsey, Esquire
The Honorable Edward W. Miller

ELECTRONICALLY FILED - 2016 Sep 21 4:59 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2305739

The Supreme Court of South Carolina

Andrew P. (Andy) Ballard, Respondent,

v.

Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc., Petitioners.

RECEIVED

SEP 09 2016

SC Court of Appeals

Appellate Case No. 2015-002036

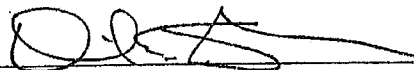
Lower Court Case No. 2008-CP-23-05739

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Few, J., not participating.

Columbia, South Carolina

September 8, 2016

cc:

Wallace K. Lightsey, Esquire

Joshua L. Howard, Esquire

The Honorable Paul B. Wickensimer

The Honorable Jenny Abbott Kitchings, Esquire

The South Carolina Court of Appeals

Andrew P. (Andy) Ballard, Respondent,

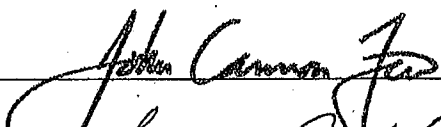
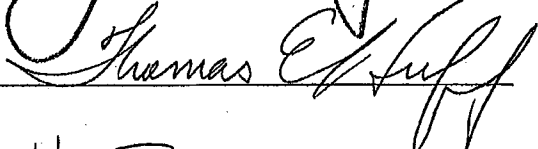
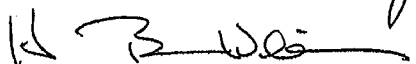
v.

Tim Roberson, Rick Thoennes, Rick Thoennes III, and
Warpath Development, Inc., Appellants.

Appellate Case No. 2013-002790

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Joshua L. Howard, Esquire
Wallace K. Lightsey, Esquire
The Honorable Edward W. Miller

FILED

November 19, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	C.A. NO. 2008-CP-23-05739
Andrew P. (Andy) Ballard,	)	
	)	
Plaintiff,	)	
v.	)	MOTION FOR RELIEF FROM THE
	)	COURT'S JUDGMENT PURSUANT TO
Tim Roberson, Rick Thoennes, Rick	)	RULE 60(b)(5) SCRCP
Thoennes, III, and Warpath Development,	)	
Inc.	)	
	)	
Defendants,	)	

PLEASE TAKE NOTICE that Defendant Tim Roberson (the "Defendant"), by and through undersigned counsel, hereby moves for relief from the court's judgment the subject of this action pursuant to Rule 60(b)(5) SCRCP because the court's judgment is no longer equitable and should have no prospective application for, including but not limited to, the following reasons:

- A. The court maintains continuing jurisdiction over its equitable decree.
- B. For reasons set forth in the Affidavit of Tim Roberson attached hereto and for reasons that will be more fully set forth in a memorandum to be timely submitted to the court, the court's judgment for the exchange of Plaintiff's shares for the value set by the court is no longer equitable. For reasons outside of the control of Defendant and explained in the accompanying affidavit, the lease with Duke Energy representing the sole asset of Warpath Development, Inc. was unilaterally and over the continued objection of Defendant terminated. Defendant's effort to stave off and counter the decision of Duke Energy has been met with silence. As a result, Warpath Development's shares have been rendered worthless. Based on this significant and relevant change of circumstances, Defendant is entitled to relief from the court's judgment in this matter.

C. Absent relief, the court's continued application of its judgment is inequitable and will work an extreme and unnecessary hardship on Defendant.

WHEREFORE, the Defendant respectfully requests that this Court grant this motion and enter and order relieving Defendant from any further application of the court's judgment in this matter.

This the 13th day of January, 2017.

Womble Carlyle Sandridge & Rice, LLP

s/Joshua L. Howard

Joshua L. Howard (S.C. Bar No. 70260)

JHoward@wcsr.com

550 S. Main St., Suite 400

Greenville, South Carolina 29601

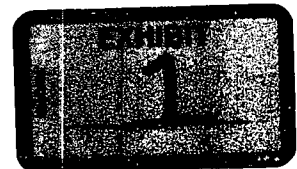
Phone: (864) 255-5406

COUNTY OF GREENVILLE)
STATE OF SOUTH CAROLINA)
_____)

AFFIDAVIT OF TIM ROBERSON

Tim Roberson, being duly sworn, states as follows:

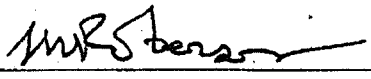
1. My name is Tim Roberson. I am over the age of eighteen and competent to make this Affidavit from my own personal knowledge.
2. I am President of Warpath Development, Inc. ("Warpath") and have served in that role since 2008. In addition to myself, Warpath's shareholders are Andy Ballard, Rick Thoennes, Sr. and Rick Thoennes, III.
3. From 2007 to present, I have made a continuous and well documented effort to fund and develop the marina proposed by Warpath. One of the efforts was to offer the shares of myself, Rick Thoennes, Sr. and Rick Thoennes, III to Andy Ballard in exchange for a release and satisfaction. Such an agreement was reached on August 8, 2014.
4. Following the agreement, Mr. Ballard was permitted a period of time to discuss a development plan with Duke Energy.
5. Following those discussions between Mr. Ballard and Duke Energy, the result was the September 30, 2014 letter from John Crutchfield to Wallace Lightsey attached here as Exhibit A.
6. Based on the representations in the letter, it appears that Mr. Ballard met with Duke Energy on September 3, 2014 and follow-up communication was provided on September 9, 2014.
7. I was not involved with the discussions between Mr. Ballard and Duke Energy, however Exhibit A sets forth conditions upon which the Duke Energy was willing to work with Mr. Ballard on the development.



8. For reasons known only to Mr. Ballard, he thereafter declined to move forward with Duke Energy and terminated the August 8, 2014 Agreement between he, myself and Rick Thoennes, Sr. and Rick Thoennes, III.
9. Prior to Mr. Ballard's involvement, I and Warpath had a productive and positive relationship with Duke Energy.
10. The entire relationship between myself and Duke Energy changed after Mr. Ballard's meetings and communications with John Crutchfield and the Duke Energy team.
11. For example, prior to Mr. Ballard's meetings and communications, Duke Energy was a willing and understanding partner. Following Mr. Ballard's rejection of the terms of development proposed by Duke Energy, I was asked to enter into an agreement to terminate the lease. Such a discussion had never been undertaken by Duke Energy prior.
12. Ultimately, following Mr. Ballard's termination of the August 8 agreement, I reengaged in my efforts to fund and develop Warpath.
13. In 2015, I was able to engage with a new financial and development partner on behalf of Warpath. Given that Mr. Ballard's cooperation was necessary, Mr. Ballard and his counsel were notified of the developments. Simultaneous to these discussions, I engaged in discussions with Duke Energy, provided a development plan in December 2015, sought and/or received the approval of necessary community and governmental partners (which had been previously received in full), started the process of renewing and/or reacquiring all necessary lapsed permits and entered into agreements to reacquire property necessary for wastewater treatment.

14. Unfortunately, due to the changed relationship with Duke Energy following Mr. Ballard's meetings and communications, Duke Energy was unwilling to participate in the development plans.
15. On January 4, 2016, Warpath received a notice of lease default with a 60 period to cure.
16. Despite objections and best efforts to reengage Duke Energy, Duke Energy issued a termination of the lease effective March 4, 2016.
17. In follow-up, I attempted further communications with Duke Energy, however those have been unsuccessful.
18. Beginning with Mr. Ballard's discussions in 2014 and outright rejection of Duke Energy's plan to move forward with Mr. Ballard and his development partners, the entire relationship between Warpath and Duke Energy fundamentally changed. Duke Energy shifted from cooperative partner to an arm's length lessor.
19. This breakdown in the relationship caused significant harm to Warpath and, despite my best efforts to repair the damage ultimately resulted in Duke Energy's termination of lease.
20. At this point, despite best efforts, I see no path forward for Warpath. Warpath has no assets and the shares are worthless.
21. At no point since 2007 has Warpath ever been developed or operational. Warpath has not generated any revenue for me, Rick Thoennes or Rick Thoennes, III in its years of existence. I have personally contributed over \$1,700,000 (\$1,000,000 of which went to Mr. Ballard) to Warpath that I will never recover. This does not include the countless, uncompensated hours contributed by myself, Rick Thoennes and Rick Thoennes, III to the development efforts.

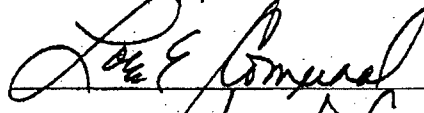
FURTHER AFFIANT SAYETH NOT.


Tim Roberson

January 12, 2017

STATE OF SOUTH CAROLINA) SOUTH CAROLINA
COUNTY OF PICKENS) OCONEE

The foregoing instrument was sworn to and subscribed before me this 12th day of JANUARY, 2017, by TIM ROBerson, who is personally known to me.


Lori E. Comanac

Notary - Print Name
Notary Public - State of SC
My commission expires: _____

My Commission Expires
August 15, 2021



WATER STRATEGY, HYDRO LICENSING
AND LAKE SERVICES

Duke Energy Corporation
526 South Church Street
Charlotte, NC 28202

Mailing Address:
EC12Y/PO Box 1006
Charlotte, NC 28201-1006

ELECTRONICALLY FILED - 2017 Jan 13 4:52 PM - GREENVILLE - COMMON PLEAS - CASE#2008CP2305739

September 30, 2014

Mr. Wallace K. Lightsey
Wyche Attorneys at Law
44 East Camperdown Way
Greenville, SC 29601-3512

Subject: Warpath Access Area Development

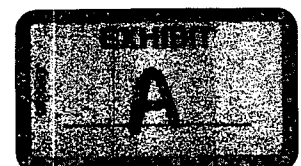
Dear Mr. Lightsey:

Thank you for your letter dated September 9, 2014, providing the proposed revised schedule of Mr. Andy Ballard ("Mr. Ballard") and Warpath Development, Inc. ("Warpath"), to complete the planned recreation amenities at the Warpath Access Area (the "Development"). As you are aware, the FERC-approved Recreation Management Plan for the Keowee-Toxaway Project (FERC Project No. 2503) and the Public Access Area Lease Agreement, dated January 3, 2007, between Duke Energy Carolinas, LLC ("Duke Energy") and Warpath (the "Lease") require Warpath to complete construction of the Development by December 31, 2015 (the "Original Development Completion Date").

Mr. Ballard confirmed during our meeting of September 3, 2014, that Warpath will not complete construction of the Development by the Original Development Completion Date and stated the delay is due, in part, to a dispute among the members of Warpath. Mr. Ballard also provided Duke Energy with a copy of the Settlement Agreement, dated August 8, 2014, settling the dispute among the members of Warpath and giving Mr. Ballard the option to re-acquire 100% ownership of Warpath. Mr. Ballard asked Duke Energy to allow Warpath additional time to complete the Development, and Duke Energy asked Mr. Ballard to provide a revised schedule in writing for Duke Energy's consideration.

Duke Energy has significant concerns regarding Warpath's failure to perform as required under the Lease. Nonetheless, upon consideration of discussion during our September 3, 2014, meeting, the proposed revised schedule provided in your letter of September 9, 2014, and the discussion with several parties to the Keowee-Toxaway Hydro Project Relicensing Agreement ("Relicensing Agreement") on September 16, 2014, Duke Energy will consider extending the deadline to complete the permitting and construction of the Development if Warpath agrees to undertake the following actions to the satisfaction of Duke Energy, at its sole discretion:

- 1) Convene a joint meeting by November 14, 2014, of representatives from each signatory party to the Relicensing Agreement and each organization that is a member of the Recreation Resource Committee to discuss the revised Development construction schedule. Please see the enclosed listing of the organizations and their lead representatives that will need to be invited to the meeting. Please also make it clear meeting invitees may bring others to the meeting.



Obtain written concurrence by January 1, 2015, from each listed organization other than Duke Energy regarding the revised construction schedule for all proposed amenities and provide copies of all correspondence to Duke Energy.

In obtaining this written concurrence, each listed organization should be provided the revised construction schedule in writing either at or immediately following the joint meeting and each organization other than Duke Energy should be given at least 45 days to respond in writing. You should also inform each organization other than Duke Energy that if it fails to respond to your written request within said 45-day time period, then for the purposes of your request, you will assume their non-response indicates concurrence. See later in this letter for a description of how and when Duke Energy will respond.

- 2) Provide timely information to Duke Energy regarding discussions with Pickens County and Warpath creditors about the status of the Development;
- 3) Provide written confirmation identifying the financing party or parties and terms of financing, including copies of any and all written agreements related to financing for the Development, to Duke Energy by March 31, 2015;
- 4) Work with Duke Energy to execute an amendment to the Lease to incorporate the terms set out in this letter and to update Exhibit B, "Conceptual Plan for Warpath Landing" to include the Amended Construction Schedule (see below for definition) by August 1, 2015;
- 5) Obtain the necessary permits and regulatory approvals to begin construction of Phase I of the Development and provide Duke Energy with written confirmation of the same, by August 1, 2015;
- 6) Provide the firm detailed plan and schedule with milestone completion dates for each construction phase (Phases I-IV) of the Development to Duke Energy by September 1, 2015, with construction of Phase I beginning no later than September 1, 2015, and completion of all phases of construction of the Development by January 31, 2020 (the "Amended Construction Schedule") (Note this plan and schedule must include and be consistent with all proposed amenities under the Original Development Plan and with the schedule provided to the organizations in accordance with Item 1 above); and
- 7) Provide timely information needed to support Duke Energy's submittal of notification to the FERC of the schedule change.

Note that Duke Energy's signature on the Lease amendment, following the satisfactory completion of the proceeding steps, would be its approval of the revised construction schedule. Duke Energy will not provide approval of a revised construction schedule separate from the Lease amendment. Also, be advised the Lease reserves the right of the FERC to require specific actions, which could include additional schedule changes among other actions.

While Duke Energy is willing to amend the Lease to allow Warpath additional time to complete the Development, subject to the terms set forth herein, it cannot tolerate further delay by Warpath in performing its obligations under the Lease. Accordingly, Duke Energy intends to closely monitor the progress of the Development and will exercise its rights under the Lease, including, but not limited to, termination of the Lease, if Warpath fails to meet the milestone completion dates in the Amended Construction Schedule or fails to comply with any other term in the Lease and/or amendments thereto.

Also, please note Duke Energy will not be able to offer to extend the Lease as specified in Section 6.2.2.1 of the Relicensing Agreement because Development construction will not be completed as originally scheduled under the existing Recreation Management Plan and as stipulated in the Relicensing Agreement.

Please let us know at your earliest convenience whether Warpath and Mr. Ballard agree to the outlined conditions and whether Mr. Ballard intends to resume complete ownership and control of Warpath and move forward with the Development so we may begin the process of preparing the Lease amendment. Of course, if Warpath and Duke Energy do not enter into a Lease amendment extending the time for Warpath to complete construction of the Development, Duke Energy retains all of its rights and remedies under the Lease as currently written and signed, including, but not limited to, the right to terminate for Warpath's continuing nonperformance of its obligations under the Lease.

If you have any questions regarding the conditions outlined in this letter, please contact Ms. Karol Mack, Duke Energy Associate General Counsel, at 704-382-8165.

Sincerely,



John Crutchfield
Director
Public Safety & Recreation Strategy Planning Services

cc w/enclosure: Mr. Andy Ballard, Warpath Development, Inc.
Ms. Lauren B. Llamas, Esquire
Ms. Karol P. Mack, Esquire
Ms. Lee D. Williams, Esquire

Enclosure 1. Organizations to Invite to Joint Meeting

Organization	Designated Representative	Mailing Address	Overnight Express Address
Duke Energy Carolinas, LLC and Duke Energy Corporation	Jennifer R. Huff* Keowee-Toxaway Hydro Project Licensing Manager	Duke Energy PO Box 1006 Mail Code EC12Y Charlotte, NC 28201	Duke Energy 526 S. Church St Mail Code EC12Y Charlotte, NC 28202
Advocates for Quality Development, Inc.	Chuck Smith*	PO Box 802 Seneca, SC 29679	211 N Harbour Drive Seneca, SC 29672-6822
Anderson Area Chamber of Commerce	Howard D. Spencer	1719 Circle Road Powdersville, SC 29642	1719 Circle Road Powdersville, SC 29642
City of Seneca	Bob Faires	PO Box 4773 Seneca, SC 29679	225 E North 1 st Street Seneca, SC 29679
Friends of Lake Keowee Society, Inc.	Ben Turetzky* Executive Director	4065 Keowee School Road Seneca, SC 29672	4065 Keowee School Road Seneca, SC 29672
Greenville Water	David Bereskin	PO Box 687 Greenville, SC 29602	406 W. Broad Street Greenville, SC 29601
Oconee County, SC	Art Holbrooks*	415 S. Pine Street Walhalla, SC 29691	415 S. Pine Street Walhalla, SC 29691
Pickens County, SC	Chris Brink*	222 McDaniel Avenue, B-10 Pickens, SC 29671	222 McDaniel Avenue, B-10 Pickens, SC 29671

Organization	Designated Representative	Mailing Address	Overnight Express Address
Pickens County Water Authority	Steve Jewsbury	222 McDaniel Avenue, B-1 Pickens, SC 29671	222 McDaniel Avenue, B-1 Pickens, SC 29671
South Carolina Dept. of Archives and History	Elizabeth M. Johnson Director, Historical Services, D-SHPO	8301 Parklane Rd. Columbia, SC 29223	8301 Parklane Rd. Columbia, SC 29223
South Carolina Dept. of Natural Resources	Bill Marshall*	P.O. Box 167 Columbia, SC 29202	1000 Assembly Street Columbia, SC 29202
South Carolina Dept. of Parks, Recreation and Tourism	Phil Gaines*	1205 Pendleton Street Columbia, SC 29201	1205 Pendleton Street Columbia, SC 29201
South Carolina Wildlife Federation	Ben Gregg Executive Director	2711 Middleburg Dr, Ste 101 Columbia, SC 29204	2711 Middleburg Dr, Ste 101 Columbia, SC 29204
The Cliffs at Keowee Vineyards Community Association, Inc.	Jim Burgner	309 Wake Robin Drive Sunset, SC 29685-2247	309 Wake Robin Drive Sunset, SC 29685-2247
The Reserve at Lake Keowee	Tony Niemeyer*	100A Village Green Loop Sunset, SC 29685	100A Village Green Loop Sunset, SC 29685
Upstate Forever	Van Whitehead	507 Pettigru Street Greenville, SC 29601	507 Pettigru Street Greenville, SC 29601
Warpath Development, Inc.	Designated Representative*		
U.S. Fish & Wildlife Service	Mark Cantrell*	160 Zillicoa St. Asheville, NC 28801	160 Zillicoa St. Asheville, NC 28801

*Recreation Resource Committee Member

1 YOU WERE NOT A DIRECTOR, CORRECT, OF THE COMPANY?

2 A. I WASN'T A DIRECTOR. THEY DIDN'T GIVE ME ANY
3 INFORMATION WHATSOEVER.

4 Q. OKAY. SO DURING THAT TIME YOU DIDN'T KNOW FROM THEM
5 WHAT WAS GOING ON WITH THE PERMIT?

6 A. NO.

7 Q. NOW THE OTHER QUESTION THAT HAS BEEN RAISED IS THIS
8 ISSUE OF HOW MANY DOCKS DUKE POWER WILL ALLOW. SO LET'S
9 GO BACK TO THE AGREEMENT. FIRST, LET'S START WITH THE
10 AGREEMENT, EXHIBIT 1. AND JUST IN GENERAL IS THERE ANY
11 PROVISION IN THERE IN WHICH YOU GUARANTEE THE NUMBER OF
12 BOAT SLIPS THAT DUKE POWER WILL ALLOW IN THE MARINA?

13 A. NO, THERE'S NOT.

14 Q. THEN IF YOU LOOK AT PARAGRAPH 3, WHICH IS ON PAGE 2
15 OF THE AGREEMENT, IT SAYS YOU, BALLARD, WARRANTS AND
16 REPRESENTS THAT HE HOLDS A LEASE WITH DUKE POWER AND THE
17 NECESSARY APPROVALS FROM DUKE POWER AND PICKENS COUNTY IN
18 ORDER TO BUILD A DEVELOPMENT PER THE CONCEPTUAL PLANS FOR
19 WARPATH LANDING, IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. NOW THOSE -- THAT CONCEPTUAL PLAN, THOSE CONCEPTUAL
22 PLANS WERE INCORPORATED IN THE DUKE POWER LEASE, IS THAT
23 RIGHT?

24 A. THAT'S CORRECT.

25 Q. AND THE DEFENDANTS HAD THAT LEASE BEFORE THEY SIGNED

1 THIS AGREEMENT, IS THAT RIGHT?

2 A. THAT'S CORRECT.

3 Q. WELL, LET'S GO BACK TO THE -- LET'S GO TO THE LEASE
4 THEN TO SEE WHAT THE LEASE SAYS. AND IF WE COULD START
5 AT PAGE 20. IF YOU COULD, IT'S GOING TO BE HARD FOR YOU,
6 BUT GO TO EXHIBIT 2, WHICH IS ALREADY IN EVIDENCE, AND GO
7 TO THE BACK OF THE CONCEPTUAL PLAN. LET'S START AT PAGE
8 23. AND, ANDY, A COPY IS IN FRONT OF YOU -- IT ALSO HAS
9 STAMPED ON THERE APB121.

10 A. YEAH.

11 Q. ALL RIGHT. AND IF YOU SEE THERE'S A REFERENCE TO
12 BOAT SLIPS. HOW MANY BOAT SLIPS DOES THE CONCEPTUAL PLAN
13 AND THE LEASE SAY THERE WILL BE?

14 A. ONE HUNDRED TO TWO HUNDRED.

15 Q. ONE HUNDRED TO TWO HUNDRED. NOW DOES IT SAY THERE,
16 SINCE THIS IS AN ISSUE, DOES IT SAY THERE WE GUARANTEE
17 TWO HUNDRED?

18 A. NO.

19 Q. NOW WHY DID -- WHY WAS THE NUMBER TWO HUNDRED IN
20 THIS CONCEPTUAL PLAN?

21 A. THE REASON THE NUMBER TWO HUNDRED WAS IN THE
22 CONCEPTUAL PLAN IS BECAUSE DUKE POWER INFORMED ME THAT I
23 SHOULD ASK FOR THE MAXIMUM OF EVERYTHING GOING IN
24 UPFRONT. TWO HUNDRED IS THE MAXIMUM NUMBER OF BOAT SLIPS
25 YOU CAN HAVE IN A COMMERCIAL MARINA ON THE LAKE.

1 Q. AND DID YOU TELL MR. ROBERSON THAT BEFORE HE SIGNED

2 THIS AGREEMENT?

3 A. YES.

4 Q. AND HE KNEW THAT?

5 A. YES.

6 Q. NOW WAS THIS THE ONLY CONTINGENCY IN WHICH YOU WENT

7 FOR THE MAXIMUM?

8 A. NO. WE WENT FOR THE MAXIMUM IN EVERYTHING. WE WENT

9 FOR THE MAXIMUM IN DRY-STACK BOAT SLIPS. WE'D SET TWO

10 HUNDRED -- ONE HUNDRED TO TWO HUNDRED.

11 Q. ALL RIGHT. WELL, LET'S LOOK AT THAT REAL QUICK ON

12 THE SAME PAGE.

13 A. WE'VE GOT TWO HUNDRED THERE.

14 Q. WAIT JUST A MINUTE. LET'S LOOK AT -- ALL RIGHT. SO

15 THE DRY BOAT STORAGE SAYS ONE HUNDRED TO TWO HUNDRED, IS

16 THAT RIGHT?

17 A. RIGHT.

18 Q. IN THE END HOW MANY DRY BOATS -- STORAGE BOATS DID

19 YOU GET?

20 A. TWO HUNDRED.

21 Q. ALL RIGHT. AND THEN WHAT ABOUT THE HOTEL?

22 A. THE HOTEL WAS A HUNDRED, I MEAN, SIXTY ROOMS TO A

23 HUNDRED AND TWENTY ROOMS. AND WE GOT A HUNDRED AND

24 TWENTY ROOMS.

25 Q. SO YOU ENDED UP GETTING THE MAXIMUM FROM DUKE POWER

ANDREW BALLARD - DIRECT EXAMINATION BY MR. HOLLEMAN

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- 1 ON THAT?
- 2 A. YES.
- 3 Q. ALL RIGHT. THEN LET'S LOOK BACK TO ONE OTHER PLACE
- 4 IN THE AGREEMENT. AND THAT IS PAGE 16 OF THE AGREEMENT.
- 5 UNDER BOAT SLIPS, IF YOU'LL LOOK AT THE LAST TWO LINES.
- 6 THAT'S ANOTHER REFERENCE TO BOAT SLIPS. AGAIN, THAT'S
- 7 THE OTHER REFERENCE IN THE AGREEMENT TO WET BOAT SLIPS,
- 8 IS THAT CORRECT?
- 9 A. THAT'S CORRECT.
- 10 Q. AND THERE'S ONE HUNDRED TO TWO HUNDRED AGAIN, IS
- 11 THAT RIGHT?
- 12 A. THAT'S CORRECT.
- 13 Q. ALL RIGHT. AND THEN LOOK AT PAGE 15, IF YOU WOULD,
- 14 UNDER B.
- 15 A. THAT'S THE DRY -- DRY DOCK STORAGE.
- 16 Q. AND HOW MANY DOES IT SAY THERE?
- 17 A. IT SAYS ONE HUNDRED TO TWO HUNDRED.
- 18 Q. NOW AND YOU WENT FOR THE MAXIMUM THERE TOO?
- 19 A. YES.
- 20 Q. AND DID DUKE POWER END UP APPROVING THAT?
- 21 A. YES, THEY DID.
- 22 Q. NOW I BELIEVE WE'LL TALK ABOUT THIS SOME MORE, BUT
- 23 IN THE END AS TO THE WET BOAT SLIPS DUKE POWER ENDED UP
- 24 APPROVING HOW MANY?
- 25 A. WITH THE LAYOUT THAT THEY'VE GIVEN THEM NOW, A

1 HUNDRED AND TWO.

2 Q. OKAY. NOW IS IT POSSIBLE TO GET MORE BOAT SLIPS IN
3 THAT LAYOUT, A HUNDRED AND TWO?

4 A. THEY COULD PUT MORE BOAT SLIPS.

5 MR. HOWARD: OBJECTION, YOUR HONOR, SPECULATION.

6 Q. CAN THEY PUT MORE BOAT SLIPS?

7 A. YES, THEY COULD IF THEY MADE SMALLER SIZED BOAT
8 SLIPS. THEY WANT TO GO WITH THE CRUISER TYPE BOAT SIZE.
9 SO THEY'RE PUTTING IN A LARGER BOAT SLIP.

10 Q. AND THAT CAUSES THE NUMBER OF SLIPS TO BE REDUCED?

11 A. THAT'S CORRECT.

12 Q. OKAY. NOW LET'S TALK ABOUT DUKE POWER'S DECISION.
13 AFTER YOU HAD SIGNED THE LEASE, YOU HAD YOUR CONCEPTUAL
14 PLAN, DID THEY CREATE DIFFERENT PLANS?

15 A. YEAH. THE DAY THAT -- AS SOON AS WE SIGNED THE
16 AGREEMENT THEY WENT TO ANOTHER ARCHITECT AND STARTED
17 DRAWING THEIR OWN CONCEPTUAL PLANS AND SITE PLANS.

18 Q. AND DID THEY ULTIMATELY SUBMIT THEIR PLAN TO DUKE
19 POWER?

20 A. YES.

21 Q. AND WHAT WAS DUKE POWER'S REACTION?

22 A. WELL, THE FIRST ONE THEY SUBMITTED THEY MARKED OUT
23 THE THINGS THAT THEY COULDN'T DO AND SENT IT BACK TO THEM
24 AND TOLD THEM TO RESUBMIT.

25 Q. NOW MR. HOWARD SAID THERE WAS A MEETING AT WHICH YOU

1 (WHEREUPON EXCERPTS OF THE DEPOSITION TESTIMONY OF
2 FREDERICK THOENNES WERE READ INTO THE RECORD)

3 DESIGNATIONS BY MR. HOLLEMAN:

4 Q. ALL RIGHT. HANNAH, YOU ARE MR. THOENNES IN THIS
5 PROCESS. SO LET ME -- I'M GOING TO START ON PAGE 5, LINE
6 25. MR. THOENNES, WHAT IS YOUR CURRENT EMPLOYMENT?

7 A. I'M SELF-EMPLOYED.

8 Q. IN WHAT FIELD?

9 A. CONSTRUCTION MOSTLY.

10 Q. WHERE DID YOU GROW UP?

11 A. UNTIL I WAS EIGHTEEN, IN CONNECTICUT, AND THEN HERE.

12 Q. DO YOU HAVE A HIGH SCHOOL DIPLOMA?

13 A. UH-HUH.

14 Q. AND FROM WHICH HIGH SCHOOL?

15 A. AMITY HIGH SCHOOL IN CONNECTICUT.

16 Q. DID YOU GO TO ANY KIND OF POST HIGH SCHOOL
17 EDUCATION?

18 A. I DID.

19 Q. AND WHERE?

20 A. BOB JONES.

21 Q. AND WHAT WAS YOUR -- DID YOU GET A DEGREE THERE?

22 A. UH-HUH.

23 Q. WHAT WAS YOUR MAJOR?

24 A. I HAD A DOUBLE MAJOR IN ACCOUNTING AND MANAGEMENT.

25 Q. SO DID YOU COME TO GREENVILLE TO ATTEND BOB JONES?

- 1 A. YES.
- 2 Q. SO LET'S GO TO PAGE 9, LINE 14. HOW LONG DID YOU
- 3 STAY IN FLORIDA THIS TIME?
- 4 A. I THINK TIL '85.
- 5 Q. AND THEN YOU RETURNED TO GREENVILLE?
- 6 A. RETURNED TO GREENVILLE.
- 7 Q. AND WHAT DID YOU DO IN GREENVILLE THEN?
- 8 A. WENT TO WORK FOR U.S. SHELTER.
- 9 Q. WHAT DID YOU DO FOR U.S. SHELTER?
- 10 A. BUILT APARTMENTS.
- 11 Q. NEXT PAGE, LINE 4. WHAT WAS YOUR JOB TITLE WITH
- 12 U.S. SHELTER?
- 13 A. I WAS THE VICE-PRESIDENT OF MULTI-FAMILY
- 14 CONSTRUCTION.
- 15 Q. AND WHAT DID YOU DO AFTER YOU LEFT U.S. SHELTER?
- 16 A. STARTED BUILDING AGAIN FOR MYSELF. DID ANOTHER
- 17 PROJECT IN EASLEY AND BUILDING HOUSES.
- 18 Q. WAS THE NAME OF YOUR COMPANY THEN RICK THOENNES
- 19 BUILDERS?
- 20 A. UH-HUH.
- 21 Q. AND YOU NEED TO SAY YES FOR HER.
- 22 A. YES.
- 23 Q. AND DOWN AT THE BOTTOM OF THE PAGE. DID YOU MOVE
- 24 INTO OTHER LINES OF WORK AS TIMES WENT BY?
- 25 A. WE DEVELOPED SOME PROPERTY, DEVELOPED COBBLESTONE

1 AND A COUPLE OF TOWNHOUSE PROJECTS, LOTS OF SINGLE
2 FAMILY.

3 Q. SO SINCE YOU LEFT U.S. SHELTER HAS RICK THOENNES
4 BUILDERS BEEN YOUR PRINCIPAL BUSINESS OPERATION?

5 A. UNTIL WE OPENED MARICK HOME BUILDERS, WHICH WAS '99,
6 MAYBE.

7 Q. AND THEN AFTER '99 MARICK HAS BEEN YOUR PRINCIPAL
8 BUSINESS, IS THAT RIGHT?

9 A. YEAH. UNTIL THE LAST PROBABLY SIX OR EIGHT MONTHS,
10 AND WE OPENED M-GROUP.

11 Q. ALL RIGHT. COULD YOU TELL ME, IF YOU COULD, LIST
12 FOR ME THE COMPANIES THAT YOU CURRENTLY HAVE AN INTEREST
13 IN.

14 A. M-GROUP, I'M A PARTNER. MARICK, I'M A PARTNER. ONE
15 SOURCE, I'M A PARTNER. IMK, I'M A PARTNER. AND WARPETH,
16 I'M A SHAREHOLDER, AND AN OFFICER AND A BOARD MEMBER.
17 GATEWAY DEVELOPERS, I'M A PARTNER. AND I BELIEVE THAT'S

18 IT.

19 Q. ALL RIGHT. LET'S GO TO PAGE 12, LINE 12. NOW IS
20 MARICK STILL OPERATING?

21 A. IT'S -- YEAH.

22 Q. AND WHAT IS IT DOING NOW?

23 A. NOTHING.

24 Q. LET'S GO TO PAGE 14, LINE 3. IS IMK OPERATING?

25 A. NO.

1 END YOU WERE ONE OF THE SIGNATORIES TO A STOCK PURCHASE

2 AGREEMENT, IS THAT CORRECT?

3 A. THAT'S RIGHT.

4 Q. A SHAREHOLDERS AGREEMENT?

5 A. YES.

6 Q. BEFORE THAT AGREEMENT WAS ENTERED INTO DID YOU MEET

7 WITH ANYONE AT DUKE POWER?

8 A. UMM...NO.

9 Q. DID YOU TALK TO ANYONE AT DUKE POWER?

10 A. YES.

11 Q. WHO DID YOU TALK TO?

12 A. OH, I WANT TO SAY JOE CARRIKER AND SCOTT JOLLEY.

13 Q. AND WHERE WERE THEY WHEN YOU TALKED WITH THEM? I

14 GATHER YOU TALKED TO THEM ON THE TELEPHONE, IS THAT

15 RIGHT?

16 A. YES.

17 Q. DOWN TO LINE 25. AND WHAT DID THEY -- WHY WERE YOU

18 CALLING THEM?

19 A. TO DISCUSS THE WARPATH DEVELOPMENT WITH THEM.

20 Q. AND WOULD YOU CONSIDER THIS PART OF THE DUE

21 DILIGENCE YOU WERE DOING?

22 A. YES.

23 Q. BEFORE ENTERING INTO THE AGREEMENT?

24 A. YES.

25 Q. I NEED YOU TO SAY YES OR NO. YOU SAID YES. OKAY.

1 OKAY. WHAT QUESTIONS DID YOU ASK THEM?

2 A. I DON'T REMEMBER.

3 Q. WELL, TELL ME GENERALLY WHAT WAS DISCUSSED.

4 A. WE TALKED ABOUT THE LEASE, HOW LONG THE LEASE WAS
5 AND HOW IT WAS RENEWED. I REMEMBER WE TALKED ABOUT THE
6 RENEWAL OF IT. WE TALKED ABOUT WHAT WAS ALLOWED TO BE
7 BUILT ON THE PROPERTY. AND WE TALKED ABOUT WHAT WE
8 NEEDED TO DO TO BUILD IT, AS I RECALL.

9 Q. NOW YOU HAD SEEN THE DUKE POWER LEASE BEFORE YOU
10 CALLED THEM, IS THAT CORRECT?

11 A. YES.

12 Q. AND YOU HAD READ THE LEASE?

13 A. YES.

14 Q. AND YOU HAD READ THE CONCEPTUAL PLAN THAT WAS
15 ATTACHED TO THE LEASE AND REFERRED TO IN THE LEASE?

16 A. I LOOKED AT THE PLAN, YES.

17 Q. NOW IN YOUR DISCUSSIONS WITH THE DUKE POWER
18 OFFICIALS CONCERNING THE LEASE DID YOU DISCUSS WITH THEM
19 HOW MANY BOAT SLIPS YOU COULD HAVE AT THE MARINA?

20 A. YES.

21 Q. AND WHAT DID YOU ASK THEM?

22 A. HOW MANY BOAT SLIPS WE COULD HAVE AT THE MARINA.

23 Q. AND WHAT DID THEY TELL YOU?

24 A. A HUNDRED TO TWO HUNDRED.

25 Q. AND DID YOU ARGUE WITH THEM ABOUT THAT?

1 A. DID I ARGUE WITH THEM?

2 Q. YES. I MEAN, DID YOU DISPUTE THAT AND SAY THAT
3 WASN'T CORRECT OR DID YOU AGREE THAT THAT WAS A CORRECT
4 STATEMENT?

5 A. I DON'T KNOW THAT I DID. I DON'T REMEMBER ARGUING
6 WITH THEM. I WOULD NEVER ARGUE WITH DUKE POWER.

7 Q. BUT ANYWAY, YOU KNEW THE NUMBER WOULD RANGE
8 SOMEWHERE BETWEEN ONE HUNDRED TO TWO HUNDRED?

9 A. THAT'S CORRECT.

10 Q. GO TO PAGE 32, LINE 5. BUT WHAT YOU REMEMBER THE
11 DUKE POWER PEOPLE TOLD YOU WAS ONE HUNDRED TO TWO
12 HUNDRED, IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. WOULD YOU AGREE THAT PHRASE DOES NOT MEAN YOU ARE
15 GUARANTEED TWO HUNDRED BOAT SLIPS?

16 A. IF THE MARKET WAS -- IF THE MARKET WAS THERE I WOULD
17 SAY THAT IT DID GUARANTEE TWO HUNDRED BOAT SLIPS, YES.

18 Q. OKAY. SO YOU'RE SAYING YOU UNDERSTOOD FROM THESE
19 TWO DUKE POWER OFFICIALS THAT IF THE MARKET SUPPORTED IT
20 THEY WOULD GUARANTEE YOU TWO HUNDRED BOAT SLIPS?

21 A. I DON'T KNOW ABOUT GUARANTEE. THEY WOULDN'T
22 GUARANTEE US ANYTHING. WE WOULD HAVE TO BUILD THEM.

23 Q. BUT THEY WOULD ALLOW YOU TO BUILD TWO HUNDRED?

24 A. THAT'S RIGHT.

25 Q. AND THAT'S WHAT YOU UNDERSTOOD FROM THEM?

- 1 A. THAT'S CORRECT.
- 2 Q. IF THE MARKET ALLOWED IT?
- 3 A. THAT'S CORRECT.
- 4 Q. AND TO PAGE 33. DID YOU DISCUSS WITH THE DUKE POWER
- 5 OFFICIALS THE PERMITTING?
- 6 A. YES.
- 7 Q. AND WHAT DID YOU DISCUSS WITH THEM?
- 8 A. WE ASKED THEM IF IT HAD BEEN PERMITTED. AND THEY
- 9 SAID IT HAD ALREADY BEEN APPROVED BY FERC.
- 10 Q. OKAY.
- 11 A. AND ALL THE AGENCY LETTERS HAD -- I CAN'T REMEMBER
- 12 WHETHER THEY TOLD ME OR ANDY TOLD ME ALL THE AGENCY
- 13 LETTERS HAD BEEN SENT.
- 14 Q. AND WAS THAT TRUE?
- 15 A. WAS WHAT TRUE?
- 16 Q. THAT ALL AGENCY LETTERS HAD BEEN SENT?
- 17 A. YES.
- 18 Q. SO DID YOU HAVE AN OPPORTUNITY TO ASK THE DUKE POWER
- 19 OFFICIALS ANYTHING YOU WANTED TO ABOUT PERMITTING?
- 20 A. YEAH.
- 21 Q. DO YOU REMEMBER ANYTHING ELSE THEY TOLD YOU ABOUT
- 22 PERMITTING?
- 23 A. IT WAS A LONG CONVERSATION. BUT THAT'S ALL I
- 24 REMEMBER. WE TALKED ABOUT -- WE TALKED ABOUT DRY-STACK.
- 25 Q. AND THEN DOWN ON LINE 8 ON THAT SAME PAGE. SO PRIOR

1 TO ENTERING INTO THE SHAREHOLDERS AGREEMENT DID YOU HAVE
2 AN OPPORTUNITY TO ASK ANY QUESTIONS YOU WANTED TO OF THE
3 DUKE POWER OFFICIALS?

4 A. YES.

5 Q. DID YOU HAVE ANY OTHER CONVERSATIONS OR MEETINGS
6 WITH DUKE POWER OTHER THAN THIS ONE PHONE CALL?

7 A. SEEMS TO ME THERE WAS MORE THAN ONE PHONE
8 CONVERSATION, BUT I CAN'T REMEMBER.

9 Q. AND IF THERE WAS MORE THAN ONE IT WAS WITH ONE OR
10 BOTH OF THESE GENTLEMEN, JOE CARRIKER AND SCOTT JOLLEY?

11 A. YEAH. EITHER ONE OF THEM OR BOTH.

12 Q. AND THEN PAGE 3 -- PAGE 35. NOW AFTER YOU ENTERED
13 INTO THE SHAREHOLDERS AGREEMENT, AT SOME POINT DUKE POWER
14 HAS TOLD YOU THEY WILL NOT APPROVE TWO HUNDRED BOAT
15 SLIPS, IS THAT RIGHT?

16 A. RIGHT.

17 Q. HOW MANY HAVE THEY SAID THEY WOULD APPROVE?

18 A. A HUNDRED AND TWO.

19 Q. AND WHO AT DUKE POWER TOLD YOU THAT?

20 A. EITHER BOTH OF THEM OR ONE OF THEM. I DON'T REALLY
21 REMEMBER.

22 Q. AND AT THE BOTTOM, LINE 22. ALL RIGHT. AFTER YOU
23 ENTERED INTO THE SHAREHOLDERS AGREEMENT, WHEN THEY TOLD
24 YOU YOU COULD HAVE A HUNDRED AND TWO BOAT SLIPS HAVE YOU
25 TOLD THE DUKE POWER OFFICIALS THAT THAT WAS NOT

- 1 A. THAT'S CORRECT.
- 2 Q. WHEN YOUR PARTNERS TALKED WITH DUKE POWER DID THEY
- 3 ASK THEM HOW MANY SLIPS DUKE POWER WOULD APPROVE?
- 4 A. I DON'T KNOW.
- 5 Q. NOW BEFORE THE CONTRACT WAS SIGNED DID YOU DO
- 6 ANYTHING TO CHECK WITH DUKE POWER TO SEE IF THEY WOULD
- 7 APPROVE TWO HUNDRED SLIPS?
- 8 A. I HAVE A LEASE. I EXPECTED IT MEANT WHAT IT SAID.
- 9 Q. ALL RIGHT. WELL, LET'S SEE WHAT IT SAYS. AND THEN
- 10 I REFER TO THE CONCEPTUAL PLAN.
- 11 A. ONE HUNDRED TO TWO HUNDRED.
- 12 Q. AND IT SAYS ONE HUNDRED TO TWO HUNDRED?
- 13 A. THAT'S CORRECT.
- 14 Q. YOU'RE AN EXPERIENCED BUSINESS PERSON. WHAT AMOUNT
- 15 IS GUARANTEED BY A CLAUSE THAT SAYS YOU CAN HAVE ONE
- 16 HUNDRED TO TWO HUNDRED?
- 17 A. A MINIMUM GUARANTEE IS ONE HUNDRED. THAT WAS BACKED
- 18 UP BY ANDY'S INVOLVEMENT IN THIS PROCESS AND WORKING WITH
- 19 US ON THE PROFORMA AS RETURN ON INVESTMENT. AND IT WAS
- 20 ALL BASED ON TWO HUNDRED.
- 21 Q. NOW DUKE POWER IS THE PARTY WHO SIGNED THIS LEASE
- 22 AND GIVES PERMISSION FOR HAVING THESE SLIPS, CORRECT?
- 23 A. THAT'S CORRECT.
- 24 Q. ANDY BALLARD DOESN'T GIVE PERMISSION FOR HAVING THE
- 25 SLIPS, IS THAT RIGHT?

- 1 A. YEAH.
- 2 Q. SO THAT WAS UP TO DUKE POWER?
- 3 A. THAT'S CORRECT.
- 4 Q. AND WHAT DUKE POWER TOLD YOU IN WRITING WAS ONE
- 5 HUNDRED TO TWO HUNDRED, CORRECT?
- 6 A. THAT'S EXACTLY WHAT THEY SAID.
- 7 Q. AND YOU KNEW THAT WHEN YOU SIGNED THIS AGREEMENT?
- 8 A. I KNEW THAT IN CONJUNCTION WITH WHAT WAS REPRESENTED
- 9 TO US BY ANDY, YES.
- 10 Q. AND YOU HAD A CHANCE TO TALK WITH DUKE POWER, IS
- 11 THAT RIGHT, YOU AND YOUR COLLEAGUES?
- 12 A. YES, WE DID.
- 13 Q. NOW IN THIS AGREEMENT, THE MAY 29 AGREEMENT THAT'S
- 14 BEFORE YOU, ANYWHERE IN HERE DOES MR. BALLARD GUARANTEE
- 15 THAT YOU WILL BE ABLE TO GET TWO HUNDRED SLIPS FROM DUKE
- 16 POWER?
- 17 A. NO.
- 18 Q. IN FACT, ALL HE WARRANTS IS APPROVAL PER THE
- 19 CONCEPTUAL PLAN, IS THAT CORRECT?
- 20 A. THAT'S CORRECT.
- 21 Q. AND THE CONCEPTUAL PLAN ONLY ASSURED A HUNDRED
- 22 SLIPS, IS THAT RIGHT?
- 23 A. THAT'S CORRECT.
- 24 Q. BUT THERE IS NO BREACH OF THIS WRITTEN AGREEMENT?
- 25 A. THAT'S TRUE.

1 A. YES.

2 Q. SO MR. BALLARD VOTED AGAINST ISSUING NINE HUNDRED
3 THOUSAND SHARES, IS THAT CORRECT?

4 A. YES.

5 Q. NOW AS WE'VE SEEN, THE AGREEMENT PROVIDES THAT YOU
6 ARE TO PROVIDE THE NECESSARY CAPITAL TO OBTAIN LONG-TERM
7 FINANCING, BUT HERE THE CORPORATION HAS VOTED TO ISSUE
8 STOCK TO RAISE ADDITIONAL CAPITAL. ISN'T THE ACTION OF
9 THE BOARD HERE INCONSISTENT WITH YOUR SHAREHOLDER --
10 INCONSISTENT WITH THE STOCKHOLDER AGREEMENT?

11 A. IT'S NOT INCONSISTENT WITH THE BUSINESS PROBLEM THAT
12 WE HAD, THE MEETINGS THAT WERE CONVENED AND REPORTED IN
13 VARIOUS EMAILS. IT'S NOT INCONSISTENT AT ALL.

14 Q. SO IS IT YOUR TESTIMONY THAT THE PROVISION IN THE
15 SHAREHOLDER AGREEMENT IS IRRELEVANT TO THE ACTION OF THE
16 STOCKHOLDERS IN APPROVING ISSUANCE OF STOCK?

17 A. YES.

18 Q. AND ONE SOLUTION WOULD HAVE BEEN FOR YOU TO PROVIDE
19 THE FUNDING, CORRECT?

20 A. WELL, YOU KNOW, AS I STATED IN ONE OF THOSE
21 DOCUMENTS, WHEN THE PROFORMAS FELL OFF FROM AS THEY WERE
22 ORIGINALLY PRESENTED THE BANK SAID WE WEREN'T VIABLE.

23 Q. SO?

24 A. OUR BUSINESS MODEL DIDN'T WORK ANYMORE.

25 Q. BUT YOU COULD HAVE PROVIDED THE CASH. YOU WOULDN'T

1 HAVE TO BORROW MONEY. YOU COULD HAVE DONE THAT, CORRECT?

2 A. WHY WOULD I?

3 Q. BECAUSE YOU AGREED TO, IN WRITING.

4 A. AGAIN, WE WERE BUYING A BUSINESS THAT WE EXPECTED TO

5 BE PROFITABLE BASED ON REPRESENTATION. IF THERE A REASON

6 TO PUT -- IF THERE IS A REASON TO PUT MORE MONEY IN, YOU

7 DO IT. IF IT DOESN'T QUITE MAKE SENSE YOU SOMETIMES

8 DECIDE YOU DON'T OR YOU GET HELP.

9 Q. AND THE REASON YOU DECIDED NOT TO IS YOU THOUGHT IT

10 WAS NO LONGER A GOOD DEAL TO DO IT THAT WAY, CORRECT?

11 A. THE PROFORMAS FELL OFF DRASTICALLY.

12 Q. AND WHAT THAT MEANS IN LAYMAN'S TERMS IS EITHER LOSE

13 MONEY OR WOULDN'T MAKE AS MUCH AS YOU WANTED TO?

14 A. THE RETURN ON INVESTMENT WAS NOT SUITABLE.

15 Q. WHICH MEANT IT WAS A MONEY LOSER INSTEAD OF A MONEY

16 MAKER, IS THAT CORRECT?

17 A. MONEY LOSER OR NOT ENOUGH TO GET A BANK'S ATTENTION.

18 Q. ONE WAY TO GET A BANK'S ATTENTION, I GUESS, WOULD BE

19 TO PROVIDE A SIGNIFICANT AMOUNT OF THE MONEY FROM YOU

20 INSTEAD OF AS MUCH BEING BORROWED, CORRECT?

21 A. YOU CAN ACTUALLY INVEST ENOUGH IN A BUSINESS OR A

22 VENTURE LIKE THAT SO THE BANK WOULDN'T EVEN CARE TO LOOK

23 AT YOUR PROFORMAS.

24 Q. SO THAT WAS AN OPTION, CORRECT?

25 A. ALWAYS.

1 Q. BUT YOU CHOSE NOT TO DO THAT?

2 A. THAT'S RIGHT.

3 Q. ONCE YOU GET PERMITTED DO YOU INTEND TO ISSUE THE
4 NINE HUNDRED THOUSAND SHARES?

5 A. I CERTAINLY HAVE THAT AS AN OPTION. AS I STATED,
6 THERE ARE POTENTIAL -- EITHER POTENTIALLY NEW INVESTORS
7 OR PARTICIPANTS IN THE PROJECT SUCH AS A HOTEL OR A
8 RESTAURANT THAT MAY TAKE AN EQUITY POSITION. THE
9 COMBINATION OF DEBT AND EQUITY IS A NORMAL COURSE OF
10 BUSINESS TO CREATE AND GROW A BUSINESS. AND THE
11 PERCENTAGE OF DEBT VERSUS EQUITY, THOSE RATIOS ARE ALWAYS
12 A JUDGMENT CALL, BUT IT'S A PRETTY COMMON PRACTICE.

13 Q. I BELIEVE ONE OF THE DOCUMENTS INDICATE YOU TALKED
14 TO PALMETTO BANK AND THEY WERE NOT INTERESTED, IS THAT
15 CORRECT?

16 A. THEY INITIALLY WERE INTERESTED ON THE INITIAL
17 PROFORMAS. THEY BECAME UNINTERESTED WHEN THE PROFORMAS
18 CHANGED.

19 Q. WHEN THEY BECAME UNINTERESTED DID YOU OFFER TO SIGN
20 PERSONAL GUARANTEES FOR ---

21 A. THAT WAS NOT A DISCUSSION. I HAD ASSUMED PERSONAL
22 GUARANTEES WOULD BE REQUIRED ANYWAY.

23 Q. WHEN THEY BECAME UNINTERESTED DID YOU OFFER TO
24 INCREASE THE AMOUNT OF CAPITAL YOU WOULD PUT IN?

25 A. WE -- NO, WE DIDN'T DISCUSS THAT.

1 Q. IN YOUR INITIAL DISCUSSIONS WITH PALMETTO BANK HOW
2 MUCH CAPITAL WERE YOU GOING TO PROVIDE?

3 A. TWENTY PERCENT OF WHATEVER WAS BORROWED.

4 Q. AND HOW MUCH CAPITAL WOULD THEY REQUIRE TO DO THE
5 FINANCING OF THE PROJECT AS IT NOW STANDS?

6 A. I DON'T KNOW. I LEFT THEM AND HIT EVERY BANK IN
7 TOWN. AND WE WERE -- WE GOT NO TAKERS.

8 Q. DID YOU OFFER TO INCREASE THE CAPITAL YOU PROVIDED
9 BEYOND TWENTY PERCENT?

10 A. NO. I KNOW JUST FROM READING THE NEWSPAPERS YOU CAN
11 WALK IN AND PUT DOWN FIFTY PERCENT AND MOST BANKS WOULD
12 BE GLAD TO DO BUSINESS WITH YOU.

13 Q. HAVE YOU OFFERED TO DO THAT?

14 A. NO.

15 Q. DO YOU INTEND TO DO THAT?

16 A. ABSOLUTELY NOT.

17 Q. NOW HAVE YOU EVER PROVIDED AN AGREEMENT -- LOOK AT
18 PARAGRAPH 4, IF YOU WOULD, THE AGREEMENT, PLEASE, SIR.
19 DO YOU SEE WHERE IT SAYS MR. BALLARD AGREES TO EXECUTE A
20 SEPARATE AGREEMENT WITH WARPETH DEFINING HIS DUTIES IN
21 THE PROJECT DEVELOPMENT? DO YOU SEE THAT?

22 A. YES.

23 Q. HAVE YOU ALL EVER PROVIDED THE AGREEMENT FOR HIM TO
24 EXECUTE?

25 A. NO.

FREDERICK THOENNES, III - DESIGNATED EXCERPTS BY MR. HOLLEMAN 356

- 1 Q. AND WHO MET WITH DUKE POWER?
- 2 A. THE MEETING I WENT TO?
- 3 Q. YES.
- 4 A. THERE WERE A BUNCH OF DUKE POWER PEOPLE THERE.
- 5 Q. WHO FROM WARPATH?
- 6 A. ANDY, MYSELF AND TIM ROBERSON.
- 7 Q. AND WAS THIS MEETING IN CHARLOTTE?
- 8 A. YES.
- 9 Q. AND WHO SPOKE AT THAT MEETING FROM WARPATH?
- 10 A. I THINK ALL OF US SPOKE.
- 11 Q. DID ANDY SPEAK?
- 12 A. I BELIEVE SO.
- 13 Q. DO YOU REMEMBER THE SUBSTANCE OF WHAT YOU SAID?
- 14 A. I KNOW WE WEREN'T HAPPY ABOUT THE FACT THAT THEY
- 15 WOULDN'T APPROVE THE -- THEY BASICALLY SHOT DOWN THE
- 16 DESIGN WE BROUGHT UP THERE WITH US PRETTY IMMEDIATELY
- 17 WHEN WE PRESENTED IT.
- 18 Q. HAVE YOU CONSIDERED FILING SUIT AGAINST DUKE POWER
- 19 ALLEGING THAT THEY HAD BREACHED THIS LEASE?
- 20 A. I DON'T THINK SO.
- 21 Q. THE LEASE IS BETWEEN WARPATH AND DUKE POWER,
- 22 CORRECT?
- 23 A. YES.
- 24 Q. PAGE 74. OKAY. YOU HAD A CHANCE TO READ THE
- 25 CONCEPTUAL PLAN AND THE LEASE BEFORE YOU SIGNED THE

1 AGREEMENT, CORRECT?

2 A. YES.

3 Q. AND THE AGREEMENT SPECIFICALLY REFERENCES THE
4 CONCEPTUAL PLAN, CORRECT?

5 A. I BELIEVE SO.

6 Q. PAGE 76. DO YOU THINK THE POSITION DUKE POWER IS
7 TAKING IS INCONSISTENT WITH WHAT IS IN THE CONCEPTUAL
8 PLAN?

9 A. YES. BECAUSE IN THE CONCEPTUAL PLAN ON PAGE 16E IT
10 SAYS THAT WE COULD GET A HUNDRED TO TWO HUNDRED BOATS AS
11 DEMAND INDICATES. AND DUKE POWER IS NOT ALLOWING THAT.

12 Q. LET ME SHOW YOU WHAT WAS PREVIOUSLY MARKED AS
13 EXHIBIT 9. AND YOU SEE ON THE FRONT OF IT THAT'S THE
14 LEASE AGREEMENT DATED JANUARY 3RD, 2007 BETWEEN DUKE
15 ENERGY AND WARPATH DEVELOPMENT? AND THAT'S EXHIBIT 2 TO
16 THE TRIAL.

17 A. YES.

18 Q. AND IF YOU LOOK AT PARAGRAPH 4, WHICH IS ON THE
19 SECOND PAGE OF THE LEASE.

20 A. OKAY.

21 Q. DO YOU SEE IT SAYS THE LEASED PREMISES SHALL BE USED
22 BY LESSEE FOR DEVELOPMENT, OPERATION AND MAINTENANCE OF A
23 PUBLIC PARK AND/OR PUBLIC RECREATIONAL AREA AS SHOWN AND
24 DESCRIBED IN THE CONCEPTUAL PLAN SUBMITTED BY LESSEE,
25 WHICH IS ATTACHED HERETO AS EXHIBIT B AND INCORPORATED

1 GEOGRAPHICAL RESTRICTION.

2 Q. IN THE AGREEMENT. AND THERE'S NO MENTION OF A
3 NUMBER OF SLIPS EITHER.

4 A. NO. WELL, THERE IS ---

5 Q. NOW ---

6 A. --- A NUMBER OF SLIPS, YES, ONE HUNDRED TO TWO
7 HUNDRED.

8 Q. NOT IN THE AGREEMENT. THAT'S IN THE CONCEPTUAL PLAN
9 AND THE LEASE, CORRECT?

10 A. THAT'S CORRECT. YES.

11 Q. ALL RIGHT. NOW AS TO THE MAXIMUM NUMBER THAT'S IN
12 THE CONCEPTUAL PLAN, THAT IS ONE HUNDRED TO TWO HUNDRED,
13 IS IT NOT TRUE THAT ANDY BALLARD TOLD YOU BEFORE YOU
14 SIGNED THE AGREEMENT THAT DUKE POWER HAD TOLD HIM TO GO
15 FOR THE MAXIMUM FOR EVERYTHING AND TO PUT THAT IN THE
16 LEASE?

17 A. THAT'S CORRECT.

18 Q. AND IS IT NOT TRUE THAT AS TO HOW THE MARINA WOULD
19 BE CONFIGURED AND HOW MANY SLIPS THAT WOULD RESULT IN,
20 THAT WAS DUKE POWER'S DECISION, NOT ANDY BALLARD'S?

21 A. THAT'S CORRECT.

22 Q. AND ISN'T IT TRUE THAT YOU RELIED ON MR. THOENNES,
23 SR., TO TALK WITH DUKE POWER? YOU NEVER TALKED WITH DUKE
24 POWER BEFORE THE AGREEMENT WAS SIGNED, CORRECT?

25 A. I BELIEVE THAT'S TRUE.

1 WAS BECAUSE YOU THOUGHT IT MIGHT BE A WAY FOR YOU TO
2 RECOVER SOME OF THE MONEY YOU HAD LOST?

3 A. NO, THAT'S NOT CORRECT.

4 Q. LET'S LOOK AT YOUR DEPOSITION. I BELIEVE WE MAY
5 HAVE SUBMITTED IT TO THE COURT.

6 THE COURT: WHAT PAGE? THAT'S FINE, YEAH. WHAT
7 PAGE?

8 MR. HOLLEMAN: 96.

9 Q. I'LL SHOW YOU PAGE 96 OF YOUR DEPOSITION. AND I'M
10 GOING TO READ THE QUESTION AT LINE 11. WHY DID YOU WANT
11 TO GET MR. BALLARD OUT OF THE DEAL? AND WHAT WAS YOUR
12 ANSWER? IF YOU COULD READ IT.

13 A. BECAUSE I FELT LIKE WE HAD BEEN TAKEN ADVANTAGE OF,
14 HAD BEEN SOLD SOMETHING THAT WAS NOT WHAT I FELT WE WERE
15 SOLD.

16 Q. BECAUSE IT TOOK LONGER TO GET THE PERMITS?

17 A. THAT, AND IN ADDITION, MAINLY THE TWO HUNDRED BOAT
18 SLIPS. I THOUGHT IT MIGHT BE A WAY FOR US TO POSSIBLY
19 RECOVER SOME OF THAT.

20 Q. SO ISN'T IT CORRECT THAT YOU THOUGHT THE REASON YOU
21 WANTED TO GET HIM OUT OF THE DEAL WAS IT WOULD BE A WAY
22 FOR YOU TO RECOVER SOME OF WHAT YOU THOUGHT YOU HAD LOST
23 FROM THE TWO HUNDRED BOAT SLIPS AND THE PERMIT ---

24 A. I DID SAY THAT HERE. I WAS REFERENCING THE EMAIL.

25 Q. NOW ANDY WAS NOT ELECTED A DIRECTOR IN 2008 AT THAT

1 STATE OF SOUTH CAROLINA)
 2) COURT OF COMMON PLEAS
 3) 2008-CP-23-5739
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COUNTY OF GREENVILLE

Andrew Ballard

-vs-

Tim Roberson, Warpath etal

August 6, 2013
 Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

A P P E A R A N C E S

Wallace Lighsey, Esquire
 Attorney for the Plaintiff

Joshua L. Howard, Esquire
 Attorney for the Defendant

CAROLINE HISKELL
 Thirteenth Circuit Court Reporter

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I N D E X

WITNESSES	DIR	CROSS	REDIR	RECROSS
Andy Ballard	10	29	37	40
Tim Roberson	43	55		
Rick Thoennes	56	62		
Perry Woodside	62			
Charles Alford	102			

E X H I B I T

IDENTIFICATION	ID	IN EVIDENCE
9 Letter	23	23
10 Email	99	99

Ballard vs. Warpath, et al

P R O C E E D I N G S

THE COURT: Andrew Ballard vs. Tim Roberson
and Warpath Development Inc. I'm all ears.

MR. LIGHTSEY: We've got motions.

THE COURT: As Judge Epps used to say,
motions, we don't need any motions. That's just visiting
the past. Okay. Go ahead.

MR. HOWARD: Your Honor, on July 17th we
received a supplemental interrogatory from the plaintiff.
A month and a half after our first hearing name
Dr. Alford as a witness. About a week or so later we got
a few more documents. There's been no report provided.
There's been no indication of what his opinions are going
to be. This was two weeks before this hearing. I would
move at this point to exclude Dr. Alford as he is too late
to the party, too late to the game based on unfair
prejudice, Rule 37 and failure to supply his name in an
adequate enough time to allow us to prepare for this
hearing today.

The second one, Your Honor, the plaintiff
also named witnesses identified as Chad Odom ---

MR. LIGHTSEY: On the second motion, Your
Honor, I decided not to call those witnesses. We
disclosed them in an abundance of caution and we don't
intend to call them.

Ballard vs. Warpath, et al

1 THE COURT: So you just got the one.

2 MR. HOWARD: We need to discuss Dr. Alford's
3 testimony, Your Honor.

4 THE COURT: Okay.

5 MR. LIGHTSEY: We've had a few starts and
6 stops in this case. I engaged Dr. Alford after we got
7 Dr. Woodside's report at the end of April. At that point,
8 we thought we were going to trial on June 4th. I engaged
9 him as a consulting expert and he was not planning on
10 being a testifying expert. I just asked him to help me to
11 understand Dr. Woodside's report after we appeared before
12 you in Pickens on the 4th. The case was continued and we
13 thought we were coming up in two weeks and that didn't
14 happened. That was when today's date was set up.

15 During that time period, I worked with
16 Dr. Alford. He found some things we thought were very
17 interesting that we thought would find very helpful in
18 this case. We did disclose Dr. Alford to the defendants
19 as soon as we decided he would be testifying as an expert.
20 He didn't do a formal report. He did do a number of
21 spread sheets. I did give those immediately to defense
22 counsel.

23 It was about three weeks ago, there would
24 have been time to work in a deposition. We would have had
25 to scurry but we could have accommodated that. More

Ballard vs. Warpath, et al

1 importantly, Your Honor, if you would allow Dr. Alford to
2 testify and take his testimony subject to the objection
3 what you'll hear is really not opinion testimony. It's
4 more explaining some mathematical computations that he's
5 done that's not. It's not an attack on Dr. Woodside's
6 methodology. He uses the same methodology but puts some
7 inputs into it and found some numbers that I don't think
8 Dr. Woodside would quibble with it. It's just different
9 inputs into the same type of calculation that Dr. Woodside
10 did.

11 I do think it would be helpful to hear this
12 testimony. I don't think it would be unfairly prejudicial
13 to the defendants and we did give notice as soon as we
14 decided that Mr. Alford had to testify about that we felt
15 would be helpful and if you could hear his testimony
16 subject to the objection, I think you'll find it helpful
17 and it is not the type of testimony that would be unfairly
18 prejudicial to the defendants.

19 THE COURT: Okay.

20 MR. HOWARD: Obviously we're not aware of
21 this testimony. This was he basically gave two weeks
22 before this year and my schedule was completely tied up
23 during those two weeks and I do not think it is reasonable
24 to set aside my schedule for a two week period in order to
25 try and accommodate their late notice of an expert. At

Ballard vs. Warpath, et al

1 this point I will continue to motion that he be excluded.

2 Also, I did inquire of Dr. Woodside if he was
3 aware, and since he was the Court's expert and appraiser
4 in this case, if he was aware of the presence of
5 Dr. Alford and he was not. None of these documents were
6 provided to Dr. Woodside for review prior to today and so
7 under those circumstances I would also seek to exclude his
8 testimony.

9 THE COURT: You want me to continue this?

10 MR. HOWARD: I do not. I want you to exclude
11 his testimony.

12 THE COURT: Y'all are asking me to value a
13 corporation and I think the factfinder ought to be
14 provided with the facts. I don't want to continue it
15 either. I want to get this over with as much as you all
16 do. Is there some way that we can -- even if it's not
17 completed today, if we can get the bulk of it over with
18 and provide you with the opportunity to revisit his
19 testimony and present some kind of rebuttal if that
20 becomes necessary.

21 I don't know what he's going to say. I have
22 no idea.

23 MR. HOWARD: That's part of the problem that
24 I'm faced with. We do have Dr. Woodside here today. From
25 a process standpoint if we're going to forward, I would

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1 think the most appropriate thing would be for the Court to
2 examine Dr. Woodside. He is the Court's appraiser and
3 this is the Court's appraisal.

4 There could be potentially -- we were going
5 to bring up a subject here today that could potentially
6 lead to another hearing being necessary.

7 THE COURT: What is it?

8 MR. HOWARD: From a process standpoint and I
9 don't know exactly how we're going to proceed here but I
10 was going to suggest to the Court that there are several
11 questions that are going to have to be addressed here
12 today.

13 The first one is value, the second one is
14 under the circumstances of the majority buyout achievable,
15 and this is based on my gentlemen here to testify today,
16 if you're going to order it within 10 or 30 days, you
17 might as well just dissolve the corporation because we
18 can't fund that buyout in 10 to 30 days.

19 We made a proposal to Mr. Ballard that would
20 extend it probably over several years, but that's what
21 we're able to do. There's some case law out there that
22 suggests that the appointment of a special master to make
23 a determination as to their ability and what would be an
24 appropriate schedule is an appropriate way for the Court
25 to proceed. If a buy-out is not achievable, I would

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1 suggest that equity would suggest that remedy fails
2 because what we're basically saying today if the buyout is
3 within 10 or 30 days, the default is inevitable and I
4 would suggest it's inequitable if default is inevitable.

5 MR. LIGHTSEY: I really take objection to
6 this. I raised this concern six months ago, seven months
7 ago, because I was worried about exactly this and said if
8 y'all don't have the money to pay it, let's deal with that
9 now and try to work something out. I was assured
10 repeatedly that they had the ability to pay a fair value
11 purchase for Mr. Ballard's stock. So I resent that being
12 brought up now after I raised that months and months ago.

13 I would suggest that once you determine what
14 a fair value is, what that number is, it be entered just
15 like any other judgment and if they don't pay it, we will
16 execute on that judgment like anybody else.

17 One of the first things we will seize to
18 satisfy the judgment is their stock in the company.
19 Mr. Ballard would like to take the company back over. We
20 had suggest that as a way of resolving this and we've
21 rebuffed that, but I don't think that needs to be
22 addressed now. I think we need to go ahead and present
23 the evidence on evaluation and for you to decide what that
24 number is, enter that judgment, and post-judgment
25 proceedings to deal with that.

Ballard vs. Warpath, et al

1 MR. HOWARD: Your Honor, I do not believe
2 that the statute would provide and it certainly doesn't
3 provide that a personal judgment can be rendered against
4 my clients. The question of buyout is an alternative to
5 the solution. This solution is the statute that they pled
6 and the cause of action if the buyout is not achievable
7 and I would suggest that the statutory remedies and we are
8 in equity here would suggest that this is not a situation
9 where these man have damaged, from a legal standpoint,
10 Mr. Ballard. He had an opportunity to raise those claims
11 and ---

12 THE COURT: I'm not sure if he would agree
13 with that.

14 MR. HOWARD: He had legal claims when we sat
15 in this courtroom three year ago, Your Honor, and he
16 dropped them before we walked in.

17 MR. LIGHTSEY: This is not correct, Your
18 Honor. In fact, we were ordered specifically noted that
19 the claim that we had for division of their shares was
20 muted by your decision to order a buyout. That claim was
21 preserved and it was addressed in our post-trial
22 memorandum and you found that it was muted by the remedy
23 ordered.

24 THE COURT: Let's just go forward with the
25 testimony. Who wants to take a lead on it?

Andy Ballard - Direct Examination by Mr.
Lightsey
Ballard vs. Warpath, et al

1 MR. LIGHTSEY: I'm prepared to, Your Honor.
2 Do you want an opening or just call the witnesses or how
3 do you want to proceed?

4 THE COURT: Let's call the witnesses..

5 MR. LIGHTSEY: We would call Andy Ballard.

6 THE CLERK: Place your left hand on the Bible
7 and raise your right hand.

8 ANDREW BALLARD, having been duly sworn
9 testified as follows:

10 Please state your name for the record.

11 THE WITNESS: Andrew H. Ballard.

12 THE CLERK: Thank you. You may be seated.

(- -) 13 MR. LIGHTSEY: Your Honor, back in late May I
14 think I sent you a copy of pre-trial memo and I thin I
15 included with that a notebook of potential exhibits. I
16 have provided one to counsel as well and I have one for
17 the court reporter. Since we're having a bench trial, I
18 found it would be easier to follow. It's got the exhibit
19 stickers on it if you want to refer to that.

20 THE COURT: Okay.

21 DIRECT EXAMINATION

22 BY MR. LIGHTSEY:

23 Q. Mr. Ballard, since Judge Miller is familiar with
24 a lot of the facts of this case and tried this case a few
25 years ago, let's skip over a lot of background and let's

Ballard vs. Warpath, et al

1 cut to the chase and try to streamline this. Could you
2 tell Judge Miller a little bit about your background,
3 where you grew up, et cetera.

4 A. I grew up in Greenville. I spent a lot time in
5 the textile industry after I finished school and then I
6 owned two or three companies.

7 Q. What type of company did you work for during your
8 career?

9 A. Textile company?

10 Q. Yes, sir.

11 A. JB Stevens, the Bib Company and VanRiver, and
12 then I also at one time I owned a golf shirt manufacturing
13 company.

14 Q. That's a company that you founded and started and
15 built?

16 A. Yes.

17 Q. Now, how long have you been involved with real
18 estate development?

19 A. About 12 or 13 years.

20 Q. What is your main business and occupation at the
21 present time?

22 A. I still do some development own a restaurant
23 called Mary Beth's.

24 Q. Has that business been successful?

25 A. Very successful.

Ballard vs. Warpath, et al

1 Q. And would it be fair to say that you are a
2 experienced and successful business man?

3 A. I hope so. I made one or two mistakes.

4 Q. With Warpath Development and again I'm going to
5 try to go through this quickly because the Judge knows a
6 lot of this but tell us again where the basically concept
7 for Warpath Development came from.

8 A. I was working with a group of developers in
9 Charleston and we worked on the Retro Light Marina and I
10 came home on the weekend and a friend of mine invited me
11 to Lake Kiwi and when we got there we went to the marina
12 and was a dump and there was nothing there and I kept
13 asking him there's not a decent marina on this lake and he
14 said, no. So from that standpoint I started checking with
15 Pickens County and Duke Power and seeing if I could find
16 land or a way to develop the land on Lake Kiwi.

17 Q. What did you find out?

18 A. I found out in 1965 Duke Power had set aside
19 eight or nine different sites on the Lake to be given to
20 the county so that they could develop recreation areas on
21 the Lake. Two of them were to be commercial sites and I
22 found out that Pickens County had put a number of RFPs on
23 the particular project and nobody had basically responded
24 except a couple of individuals who just wanted it for
25 their own use.

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1 So I convinced Pickens County to put out an
2 RFP so that I could bid a proposal to them and see if I
3 could get the project. The put out an RFP, I presented an
4 conceptional plan to them. They accepted it, their
5 executive committee accepted it and eventually we brought
6 Duke Power in and Duke Power loved the concept. They
7 accepted it. Pickens County full counsel voted to accept
8 it and proceed with the project.

9 Then we started working with the Federal
10 Energy Regulatory Commission and we worked with another 18
11 agencies that we had to go through and we eventually got a
12 lease once all these agencies agreed to it.

13 Q. How long a time period did this all take?

14 A.. I started in 2003 and we finally got the actual
15 lease on the property in 2007.

16 Q. And were you doing that on your own or were other
17 people assisting you?

18 A. No, I did this on my own. All that was totally
19 on my own.

20 Q. How much time roughly did that involve of your
21 time?

22 A. It took over four years off and on. Dealing with
23 the Federal Energy Commission and Duke Power was quite
24 expensive.

25 MR. LIGHTSEY: Your Honor, to streamline

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1 things, I would like to incorporate the prior trial record
2 and the exhibits in this proceeding. For ease of
3 reference, I've marked as Plaintiff's No. 3 a document.

4 BY MR. LIGHTSEY:

5 Q. Would you turn to Tap 3, Mr. Ballard. Do you
6 recognize that document?

7 A. Yes.

8 Q. What is that document?

9 A. It's a copy of the lease from Duke Power.

10 Q. What was the date on it?

11 A. January of 2007.

12 Q. If you look down at the very bottom of Page 1,
13 how many acres does the lease cover?

14 A. Sixty-three acres.

15 Q. If you turn to Page 2, the first paragraph there
16 where it says term, just summarize the terms of this
17 lease?

18 A. The terms of this lease is a continuing lease
19 that every time FERC extends the lease to the nuclear
20 plant, to Duke Power, there's an automatic extension on
21 the lease for the project. It's a perpetual lease.

22 Q. As long as the lessee is in compliance, the lease
23 goes forever; is that correct?

24 A. That's correct.

25 Q. The lease is actually with a company called

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1 Warpath Development Company, Inc.

2 A. Yes.

3 Q. Tell us about Warpath, who started that?

4 A. I started Warpath Corporation. The reason I
5 started Warpath instead of having it in my name was I knew
6 I would have to create some kind of entity so that I can
7 raise the money to build the project and produce the
8 marina.

9 Q. Where does that name Warpath come from?

10 A. That's the area of the road there. That road was
11 named Warpath there because supposedly this site was the
12 closest to the most inner fort the British had when they
13 fought the Indians.

14 Q. Given that the lease is in the name of the
15 Warpath, what percentage of the assets of this company is
16 represented by this lease, roughly? How significant is
17 this in terms of the assets of the company?

18 A. I guess a large percentage of the assets of the
19 company. You've got probably somewhere depending on the
20 times or the market at the time you got somewhere between
21 20 and 30 million dollars worth of real estate you got
22 leased for life.

23 Q. And the defendants in this case, did they have
24 anything to do with obtaining of the lease?

25 A. No.

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1 Q. How did the defendants get involved with this
2 project?

3 A. After I obtained the lease and even before the
4 lease, I began talking to different groups, investing
5 groups, about investing in the project and some people
6 that I talked to wanted me to meet these guys and
7 introduced me to them and they said that they might have
8 an interest in doing something. So I met with them and
9 showed them my conceptional plans, told them about the
10 project, told them what I would take and what I would do
11 and they kind of weren't interested. And then a little
12 bit late, somehow we got back together and they were
13 interested but they wanted a bigger part of it, so that's
14 what I agreed to sell them 20,000 shares of my personal
15 stock.

16 Q. There was a lot of testimony in the previous
17 trial about these negotiations and discussions and I don't
18 want to go into that detail, but did you eventually reach
19 an agreement with them on how the stock ownership would be
20 done?

21 A. Yes.

22 Q. If you'll turn to Exhibit No. 1, could you tell
23 us what that exhibit is?

24 A. This is a copy of our stock purchase agreement.

25 Q. Now, under this agreement, and again I'm trying

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1 to hi-speed through this, but pursuant to this agreement,
2 you sold 20,000 of your shares to Roberson directly; is
3 that correct?

4 A. That's correct.

5 Q. And then another 20,000 shares each to a security
6 deposit company, Mr. Roberson, Mr. Thoennes and
7 Mr. Thoennes's son; is that right?

8 A. That's correct.

9 Q. And you got a million dollars for the 20,000
10 shares that you sold directly to Mr. Roberson. The
11 million dollars, in your mind, was that the actual total
12 value of those 20,000 shares?

13 A. No.

14 MR. HOWARD: Objection, Your Honor, he's
15 asking to the total value of those shares.

16 THE COURT: He's just asking what his state
17 of mind was. That's alright.

18 BY MR. HOWARD:

19 Q. Why are you saying that a million dollars was not
20 the total value for those shares?

21 A. Because I felt like the project was a lot more
22 but these guys were willing to come in and put up the
23 money necessary to obtain loans, term financing, and the
24 build the project and get it off the ground, so that's why
25 the corporation issued the 60,000 shares to them so that

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1 we can complete building the project.

2 Q. And you retained 20,000 shares yourself?

3 A. Correct.

4 Q. In your mind what did you feel was going to
5 happen to the value of those shares if the defendants
6 carried out what they agreed to do in this contract?

7 A. Oh, if they had built the project to the
8 conceptional plans and everything that had been agreed
9 upon, the value of my stock would have greatly increased.

10 Q. So why did you take a million for this 20,000
11 shares?

12 A. So that I could have the assess to raise the
13 money to build for the project. They assured me that they
14 had the money and could get the money to build the
15 project. They knew up front going in that it was to cost
16 anywhere from 40 to 50 to 60 percent up front money to
17 build the project, but Mr. Roberson was in the process of
18 selling a commune, but they assured me that they had banks
19 that would loan them the money and they wouldn't even have
20 to have that much money.

21 Q. What were the Thomases supposed to do for their
22 shares?

23 A. The Thomases were supposed to handle the
24 construction, the building and help with the permanent
25 financing.

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1 Q. And at that time, did the project have all of the
2 permits and government approvals they needed to begin
3 construction?

4 A. No, it did not.

5 Q. Under the contract, what would have happened to
6 the money if you didn't get all of the permits necessary?

7 A. I would give them the million dollars back.

8 Q. At this time, have all of the permits been
9 issued?

10 A. All the permits have been issued since 2010.

11 Q. Has the project been built?

12 A. No, it has not.

13 Q. What has been done with the site?

14 A. The only thing I seen is like a little silk
15 screen fence around it. Other than that there's nothing.

16 Q. You're actually a director of the company; is
17 that correct?

18 A. I'm supposed to be a director.

19 Q. Have there been any director's meetings that
20 you've been invited to?

21 A. The last stockholder's meetings that I was
22 invited to was 2011 or 2010, I'm not sure.

23 Q. When was the final permanent plan?

24 A. June of 2010, I believe.

25 Q. If the development had started in 2010, where

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1 would it be today?

2 A. It would be completed.

3 Q. It would be operational?

4 A. It should be.

5 Q. Making money?

6 A. Should have been.

7 Q. Has Mr. Roberson provided the capital necessary
8 to get long term financing for this company?

9 A. Not that I've seen.

10 Q. Other than putting the fence up, have they done
11 any site work?

12 A. Not that I know of.

13 Q. You mentioned there was one shareholder meeting.
14 When was that?

15 A. I believe it was in 2011, somewhere mid-year
16 2011.

17 Q. And have there been any shareholder meetings
18 since 2011?

19 A. A scheduled one in 2012 but then they cancelled
20 it. There has not been a shareholder meeting since that
21 one in 2011.

22 Q. Tell us what happened at that meeting in 2011?

23 A. Not a whole lot. . They gave me a list of things
24 they said they had done and were doing and the people they
25 had talked to and had gotten FDA approval for an 80

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1 percent guaranteed loan which was an absolute lie. I
2 called the head of the FDA the next day and he said he had
3 talked to them one or two times ---

4 MR. COUNSEL: Objection, Your Honor, hearsay.

5 THE COURT: Yep. Move on.

6 BY MR. HOWARD:

7 Q. You were elected to the board of directors in
8 September of 2009; is that correct?

9 A. The board?

10 Q. You were on the board originally and you were
11 voted off, correct?

12 A. I guess I was voted off. It was taken off.

13 Q. In September of 2009 after you filed your amended
14 complaint in this case, you were put back on, correct?

15 A. That's correct.

16 Q. Since then have you been notified of any board of
17 directors meetings?

18 A. Absolutely not.

19 Q. Have you been provided financial or other
20 information as director of the company?

21 A. No.

22 Q. Were you asked to participate in any board
23 decisions?

24 A. No.

25 Q. Through your attorney, did you raise any concerns

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1 about this matter?

2 A. Yes.

3 Q. I'm handing you a letter dated March 4, 2011 from
4 Frank Hollaman to Mr. Josh Howard, is this what you were
5 just referring to?

6 A. Yes.

7 Q. And on your behalf did Mr. Hollaman raise
8 concerns about the delays in providing information?

9 A. Yes, he did.

10 Q. As far as you know, was there any response to
11 this letter?

12 A. None that I was ever told about.

13 MR. LIGHTSEY: Your Honor, I move this into
14 evidence as Plaintiff's Exhibit No. 9.

15 MR. HOWARD: I'm not sure what the relevance
16 of this is, Your Honor. It's a letter sent to me and I
17 don't know what the relevance is at this point.

18 MR. LIGHTSEY: Your Honor, I think this goes
19 to the timing of the evaluation under the statute, the
20 evaluation is made as of the time when the wrongful
21 conduct is occurring. It's out position that the wrongful
22 conduct has continued since 2011 through the presence and
23 this is proof of that.

24 THE COURT: Okay. Subject to your objection:

25 (Letter marked as Plaintiff's Exhibit No. 9

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1 for identification and admitted into evidence.)

2 BY MR. LIGHTSEY:

3 Q. Mr. Ballard, as the owner of 20,000 shares in
4 Warpath, what is your opinion on the value of those shares
5 now in comparison to what they worth in 2007?

6 MR. HOWARD: Objection, Your Honor, he
7 doesn't have the basis or ability to issue an opinion.
8 This is not a situation where he's valuing real estate or
9 his own personal -- this is expert testimony that is
10 required by the appraisers.

11 MR. LIGHTSEY: Objection, Your Honor. South
12 Carolina and most states follow the rule that an owner of
13 the property can testify to its value and that has been
14 applied specifically to business interest including cases
15 involving the evaluation of minority shares for buyout.

16 THE COURT: Go ahead, subject to your
17 objection.

18 BY MR. LIGHTSEY:

19 Q. Do you want me to repeat my question?

20 A. Yeah.

21 Q. As the owner of the 20,000 shares that you still
22 hold in Warpath, what is their value now -- what is your
23 opinion of their value now as compared to what they were
24 worth in 2007?

25 A. Well, the way I look at it there are only two

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1 assets to the company, one is the lease and one is the
2 permits, and if you look at the value of the lease and say
3 you just use twenty million dollars of that real estate
4 and you only use half of that value and because it's on a
5 lease that's still ten million dollars. If you got all
6 the permits to build everything, that's got to be worth at
7 least that much or more so I would think the value of the
8 company is worth twenty million dollars and my twenty
9 percent of that is four million dollars.

10 Q. In 2007, you didn't have the permits.

11 A. You didn't have the permits.

12 Q. And at that time Mr. Roberson paid you one
13 million dollars for 20,000 shares.

14 A. That's correct.

15 Q. And you believe now the value is more than what
16 it was then because of the permits?

17 A. Absolutely.

18 Q. Tell us a little bit about what you're basing
19 this opinion on, what experience do you have that enables
20 you to give this testimony?

21 A. Just doing the development work that I've done
22 over the past 13 or 14 years looking at projects and doing
23 prospectus and development of the projects.

24 Q. And Mr. Ballard if you, in the course of this
25 action, have you seen various loan applications or

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1 proposals that the defendants have made for funding for
2 the project?

3 A. Yes, I have.

4 Q. If you would turn to Exhibit 4. This is
5 subdivided into A,B,C & D and I just want to go quickly
6 through these. On Exhibit 4a, is this a document that was
7 provided to us by defendants in discovery?

8 A. Yes, it was.

9 Q. And what's the date on this one?

10 A. March 31, 2009.

11 Q. What is the amount of the loan being requested?

12 A. Twenty-eight million.

13 Q. If you would turn to the second page of that
14 exhibit, whose signature is down at the bottom there?

15 A. Rick Thoennes, Treasurer.

16 Q. And if you'll turn to Exhibit 4b, what is the
17 date on that document?

18 A. 11-15-11.

19 Q. November 15th of 2011?

20 A. Yes.

21 Q. And what is the loan amount being requested
22 there?

23 A. Twenty-seven million.

24 Q. What does this document say appraised value of
25 the property?

Ballard vs. Warpath, et al

1 A. Thirty-six million, six hundred and sixty-nine
2 thousand, fifty dollars.

3 Q. If you look at the second page of this exhibit
4 just above, halfway down the page, it says in all caps,
5 "Current value of this property in its present condition."
6 What is stated there?

7 A. Six million dollars.

8 Q. If you turn to Page 4 of this exhibit, Paragraph
9 16 where it says, "Special Circumstances," if you would
10 just read what it says about the lease.

11 A. "The lease is held by Warpath Development
12 Corporation and granted by Duke Power and sent to the
13 Federal Regulatory Commission."

14 Q. I'm sorry. The next sentence.

15 A. "For all practical purposes the lease is for
16 perpetual as it is automatically renewed (inaudible) hydro
17 electric licensing which runs in intervals of 30 to 50
18 years."

19 Q. Let's turn to Exhibit 4c, if you look down at the
20 bottom of that first page, what is the amount being
21 requested there?

22 A. A total of twenty-nine million, five hundred and
23 eighty thousand.

24 Q. If you'll go to the third page, whose electronic
25 signature is there?

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1 A. Rick Thoennes, President of Warpath Development.

2 Q. And you mentioned before the prior application
3 said Rick Thoennes, Treasurer and this one says President.
4 Were you at any board meeting where Mr. Thoennes was
5 elected president?

6 A. No.

7 Q. Were you even aware of that?

8 A. No.

9 Q. If you'll turn to the very next page which is a
10 letter dated April 11, 2012 at the bottom of the second
11 paragraph, what does he say as far as how the loan would
12 be repaid?

13 A. I'm not with you.

14 Q. It's the April 11, 2012 letter, the second
15 paragraph, last sentence of that paragraph.

16 A. "I would think the repayment would be from the
17 income produced on my project and paid to you monthly,
18 principal and interest."

19 Q. Now, let's go to Exhibit 4d which is a
20 conditional loan commitment, do you see that? What are
21 they proposing in terms of the amount being invested?

22 A. Twenty-four million, fourteen million debt, 9.6
23 million equity.

24 Q. And if you look down under equity split, it says
25 60/40 and paid back 50/50, do you see that?

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1 A. That's correct.

2 Q. And this was a 9.6 million dollar equity
3 investment for initially 60 percent and then 50/50; is
4 that correct?

5 A. That's correct.

6 MR. LIGHTSEY: Your Honor, I move Exhibits 4a
7 though 4d into evidence.

8 MR. HOWARD: No objection.

9 THE COURT: Okay.

10 (Packet previous marked as Plaintiff's
11 Exhibit Nos 4a through 4d, was admitted into evidence.)

12 BY MR. LIGHTSEY:

13 Q. If you would, let's turn back to 4b, do you see
14 that?

15 A. Yes.

16 Q. In the records here, the appraised value of the
17 project is thirty-six million, six hundred and six-nine
18 thousand, and fifty dollars, and what would your 20
19 percent share of that be?

20 A. That's almost thirty-seven million dollars I
21 would say. Twenty percent of that would 7.2 million
22 dollars.

23 Q. If you look at the second page where it states
24 the current value of the property as it is it says six
25 million dollars. If your ownership interest is 50 percent

Andy Ballard - Cross Examination by Mr.
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1 of the current value as is without any development or
2 financing for the other defendants, what would 50 percent
3 of that ---

4 A. It would be three million dollars.

5 MR. LIGHTSEY: No further questions, Your
6 Honor.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MR. HOWARD:

10 Q. Good morning.

11 A. Good morning.

12 Q. Mr. Ballard, Exhibit 1 is a signed purchase
13 agreement, do you see that?

14 A. Yes.

15 Q. You signed that willingly, correct?

16 A. Absolutely.

17 Q. And when you signed that you understood that you
18 were relinquishing control of your company, correct, at
19 that point? They were taking 80 percent and they were
20 taking 20 percent when you signed that, correct?

21 A. Absolutely, I understood that.

22 Q. And that agreement doesn't provide any promises
23 on return, does it not?

24 A. No, it does not guarantee me any promises.

25 Q. You knew it was a risk when you went into it just

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1 like anytime when you put equity into it there's going to
2 be a risk component to it, correct?

3 A. Yes.

4 Q. There's a risk of whether it was going to get
5 built?

6 A. There was a big risk on my part.

7 Q. But there's a risk. There's always a risk.

8 A. Taking their commitment in them putting up the
9 money and ---

10 Q. There's always a risk, correct?

11 A. Correct.

12 Q. And there was nothing promised, correct?

13 A. There were promises.

14 Q. They didn't promise you a ---

15 THE COURT: Hold it. Let him ask the
16 question.

17 BY MR. HOWARD:

18 Q. They did not promise you a return.

19 A. They did not promise me a return.

20 Q. They promised you another \$150,000.

21 A. That is correct.

22 Q. And that's all that they promised you you would
23 get out of that project, correct, in that agreement?

24 A. That's all they promised me in the agreement.

25 They promised Warpath Development that they would put up

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1 the money and the necessary funds to develop and build the
2 project.

3 Q. To get financing to build the project, correct?

4 A. And to put up the equity needed and that would
5 take anywhere from 30 to 60 percent and they stated that
6 in emails.

7 Q. That's your assessment of that.

8 A. That was a fact.

9 Q. The promises they made were to put up money for
10 financing and to develop the project, correct?

11 A. That's correct.

12 Q. There is no mention in that stock purchase
13 agreement about when the project would be built, is there?

14 A. No, there's not.

15 Q. As far as communication, you've already testified
16 that they held a stock shareholder's meeting in 2011,
17 correct, and you were present?

18 A. I was present.

19 Q. There was one schedule in 2012, correct?

20 A. Yes.

21 Q. And you were made aware of that?

22 A. It was scheduled but never happened.

23 Q. Just never happened, but you were made aware of
24 it?

25 A. They cancelled it.

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1 Q. You received tax returns and copies of the
2 yearly, correct?

3 A. That's, basically, the only communication I
4 received from them.

5 Q. Except for the fact last fall you were intimately
6 involved in one of the attempts to get financing, correct?

7 A. I was in discussion with a party that was trying
8 to get financing and they asked me to go and talk with
9 someone who was interested in building the marina with
10 them. I really didn't have anything to do with the
11 financing of it.

12 Q. The first party that you talked to do you
13 remember a name by the name of Brad Seckinger?

14 A. Absolutely.

15 Q. Do you know Brad Seckinger?

16 A. I know him. He's an acquaintance.

17 Q. Did you know him before he came to speak with
18 you?

19 A. I knew him when he came in the restaurant a few
20 times.

21 Q. And Mr. Seckinger was attempting to put together
22 a deal to finance the project, was he not?

23 A. I don't know exactly how he was working with them
24 or what he was doing but from what I understood they owed
25 him money and he was trying to come up with a way where he

Ballard vs. Warpath, et al

1 could get his money and put together a bill for them to
2 build the marina.

3 Q. And he came and spoke to you about it and brought
4 you in connection with the people that were attempting to
5 build the marina, correct?

6 A. He introduced me to one party.

7 Q. Peter Anzo?

8 A. Yeah.

9 Q. And he was the principal of the investment group
10 that was looking to build the marina, correct?

11 A. That's correct.

12 Q. And you had a conversation with Mr. Anzo?

13 A. Right.

14 Q. And you were invited to those communications by
15 Mr. Roberson, Mr. Seckinger, correct?

16 A. No.

17 Q. You were not invited to those communications by
18 Mr. Roberson, you weren't welcomed to the table?

19 A. No.

20 Q. You visited the site with Mr. Seckinger, correct?

21 A. I did.

22 Q. They sought your opinion, did they not?

23 A. Peter and Mr. Seckinger?

24 Q. Yes.

25 A. I told them where I stood and the position and

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1 what my position was and I told them about what I had done
2 to get everything ready to do.

3 Q. Were they looking to buyout your interest?

4 A. No.

5 Q. Did you make any offers to them to buyout your
6 interest?

7 A. I never made an offer to them for them to buy out
8 my interest.

9 Q. The lease hold interest, have you ever had it
10 appraised?

11 A. No.

12 Q. So the twenty million is just your opinion?

13 A. Just my opinion, absolutely, it's my personal
14 opinion.

15 Q. And this siting itself it's 63 acres, correct?

16 A. Correct.

17 Q. And the lease on it provides that it can be built
18 for one purpose and one purpose only, correct?

19 A. That's correct.

20 Q. And that purpose is even further specified out in
21 a conceptional plan; is that right?

22 A. That's correct.

23 Q. Would you describe it as a limited development
24 opportunity?

25 A. I think it's a fabulous development opportunity.

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1 Q. I'm not asking you that. You can not break up
2 that property and sell it off into pieces, could you?

3 A. Absolutely not.

4 Q. So you do not have 63 acres of lakefront property
5 that you could break up and sell it a million dollars a
6 piece or something like that?

7 A. You couldn't sell it off, you could sublease if
8 you wanted to and they understood that. So it's not just
9 -- it's a fabulous opportunity.

10 Q. I don't think they disagree with you, it's a
11 great opportunity, but it's for a limited purpose,
12 correct?

13 A. It's for a marina, a hotel, two restaurants, four
14 cabins, camp sites.

15 Q. And that costs a lot to build, right?

16 A. Right.

17 Q. Do you know how much it costs to build?

18 A. Well, when we were first looking at it we were
19 estimating 13 to 14 million and now they've gone to 28 and
20 29. I think it's going to cost somewhere around 20
21 million to build. They've got a lot of pad in there for
22 something.

23 Q. Do you have any estimates?

24 A. No. That was my market tag when we first went
25 into the project when we were first looking at it his

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1 estimates were.

2 Q. If you turn to Exhibit 4b, fifth page, what's the
3 development budget?

4 A. Development budget is twenty-seven million.

5 Q. Do you have a number to say that should be
6 different?

7 A. No.

8 Q. You developed your own numbers in here today,
9 have not?

10 A. Not in the last five or six years.

11 Q. And certainly to get to the value of this
12 development, you're going to have to build it, correct?

13 A. Correct.

14 Q. You got to have the marina. It's going to cost
15 money to build the marina, correct?

16 A. Correct. We understand all that.

17 Q. All of these things are going to have to be built
18 before you get all this income that is projected, correct?

19 A. Correct.

20 Q. And it's going to cost twenty-seven million to
21 build it according to this?

22 A. According to this.

23 Q. And you don't have any other numbers to be
24 otherwise?

25 A. I don't have any reason to believe this is

Andy Ballard - Redirect Examination by Mr.
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1 correct either.

2 Q. But you don't have any basis? You're not coming
3 in here with numbers and you don't have any basis to
4 suggest that it's incorrect?

5 A. You're right.

6 Q. And, of course, on any value that you're going to
7 assess on this, you're going to have to back out what it's
8 going to cost to build it, correct?

9 A. Correct.

10 MR. HOWARD: That's all the questions I have,
11 Your Honor.

12 THE COURT: Any redirect?

13 MR. LIGHTSEY: Just a few, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. LIGHTSEY:

16 Q. Mr. Ballard, you were asked about the stock
17 purchase agreement which is Exhibit 1 if there was any
18 promise of a return to you in that document. Do you
19 remember those questions?

20 A. Yes.

21 Q. Does that document anywhere promise you any
22 guarantee return to the other stockholders?

23 A. No, it does not. They got the stock one they
24 fulfilled their obligation then the stock would become
25 theirs.

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1 Q. Is there anything in that document that says once
2 you invest in this company you're going to get a 22
3 percent return on the investment?

4 A. Absolutely not.

5 Q. Now, you were asked about some discussions with
6 Mr. Brad Seckinger and a man named Peter Anzo. If you
7 would turn to Exhibit No. 5, do you see that?

8 A. Yes, sir.

9 Q. And that's the offer Mr. Anzo made through
10 Mr. Seckinger; is that correct?

11 A. That's correct.

12 Q. What was the dollar amount of his offer?

13 A. Four and a half million dollars to start the
14 development of the plan.

15 Q. Do you recall what the ownership interest was
16 that he was going to get for that four and a half million?

17 A. It seems like it was 70 percent.

18 Q. If you'll turn to the end of the agreement, the
19 bottom of the agreement, the contribution agreement, the
20 second paragraph there. Do you see that?

21 A. Seventy percent.

22 Q. If you take four and a half million dollars and
23 provide it by 70 percent, what number do you get for 100
24 percent?

25 A. Six million, four hundred and twenty-eight

Ballard vs. Warpath, et al.

1 thousand, five hundred (inaudible).

2 Q. And 50 percent of that number would be about
3 what?

4 A. Three million.

5 Q. 3.2 million?

6 A. Yes.

7 Q. You mentioned about the possibility of leasing a
8 hotel. Could you elaborate a little bit about that to
9 Judge Miller what you mean by that.

10 A. Like I said one reason I put it in the
11 corporation's name is because I knew I was going to
12 attempt to sell some 'stock' to raise some money. The other
13 thing was by putting it into a corporation, if we decided
14 to lease property, if we decided to lease the land for a
15 hotel to a flagship chain or something for millions of
16 dollars, then we would have a tendency to do that. There
17 is nothing in that agreement that says you can't sublet
18 part of the property for a hotel. It's got to be in the
19 conceptional plans. It would have to stay within the
20 conceptional concept of the project but the hotel side
21 could be leased to a major chain if you could find one.

22 Q. If you did that within Warpath then you wouldn't
23 incur any expenses in connection with the hotel?

24 A. That's what I don't know what they're planning to
25 do. They can't come up with money. I don't have any idea

Andy Ballard - Recross Examination by Mr.
Howard Ballard vs. Warpath, et al

1 of what they're planning to do with the hotel or the
2 marina or anything else. I don't know what they're
3 planning to do.

4 Q. Is that a potential way of realizing value for
5 this property?

6 A. If they leased it for a million or two million or
7 three million dollars a year and they got that coming in
8 and they don't have the expense of building a hotel,
9 that's a pretty significant income.

10 MR. LIGHTSEY: Thank you. That's all I have.

11 RECROSS-EXAMINATION

12 BY MR. HOWARD:

13 Q. Have you sought out a hotel chain and asked them
14 what they would be willing to pay for the ground lease
15 there?

16 A. No.

17 Q. And you have no idea today one million, two,
18 three million you're throwing out there, you have no idea
19 of ---

20 A. I have no idea of what a hotel chain would pay.

21 Q. If there's no marina there, do you know if a
22 hotel is going to put their hotel there without a marina
23 there?

24 A. I don't know. And advisor with the State flew up
25 here looking at how we can increase tourism in the State

Ballard vs. Warpath, et al

1 of South Carolina. They flew him in a helicopter and they
2 flew him over Lake Kiwi and the first thing he said is you
3 don't have a hotel on that lake. He said that would be
4 one of the key issues in increasing tourism in the
5 Upstate. They know this.

6 Q. You have not sought this out.

7 A. I have done this in the last five years because I
8 didn't have control of the project.

9 Q. But you've had an opportunity to put in input.
10 You could have said ---

11 A. To who?

12 Q. To them.

13 A. They haven't asked me for my input. They haven't
14 kept me informed of anything.

15 Q. Your input was not sought?

16 A. Not by them. It was sought by a person they owed
17 three million dollars to that was trying to figure out a
18 way that he could get his money back.

19 Q. You were invite to the table, Mr. Ballard.

20 A. You are wrong.

21 THE COURT: Alright, you can step down.

22 MR. LIGHTSEY: That's all the evidence at
23 this time, Your Honor. Like I said we do anticipate in
24 calling Dr. Alford but it would be after Dr. Woodside.

25 THE COURT: Anything you want to put up?

Ballard vs. Warpath, et al

1 MR. HOWARD: I'd like a directed verdict.

2 THE COURT: I haven't heard from Dr. Woodside
3 yet.

4 MR. HOWARD: I'm just trying to understand
5 the process here, we have the plaintiff put up their case.
6 They have an expert sitting out there and we have an
7 appraiser sitting out there and is not my witness, it's
8 the Court's appraiser. I'm trying to understand exactly
9 where my case would fit in the due process. I do have
10 some testimony I would like to put up and I'd like to know
11 where we stand in the case in chief in the process.

12 THE COURT: This is a bit of a hybrid
13 hearing. It's an evaluation on a corporation and I am
14 going to hear from Dr. Woodside.

15 MR. HOWARD: I understand and I fully expect
16 you to.

17 THE COURT: You want to take a few minutes
18 and talk to your clients?

19 MR. HOWARD: Yes, Your Honor.

20 MR. LIGHTSEY: Just to be clear, Your Honor,
21 with respect to Dr. Woodside, I do object to his report.
22 I think there are evidentiary objections to it. I don't
23 want to be the sponsor of that report that why I would not
24 call him.

25 THE COURT: I'll be calling him as a Court's

Tim Roberson - Direct Examination by Mr.
Howard vs. Warpath, et al

1 witness.

2 MR. LIGHTSEY: I think that Dr. Alford's
3 testimony would make more sense after Dr. Woodside's.

4 THE COURT: You can call him as a rebuttal.

5 (Whereupon, there was a brief break.)

6 Ready?

7 MR. HOWARD: I would call Mr. Roberson.

8 THE CLERK: Place your left hand on the Bible
9 and raise your right hand.

10 TIM W. ROBERSON, having been duly sworn,
11 testified as follows:

12 Thank you. You may be seated. State your
13 name for the record.

14 THE WITNESS: Tim w. Roberson.

15 CROSS-EXAMINATION

16 BY MR. HOWARD:

17 Q. Tim, we know the Judge heard several days of
18 testimony back in 2010, but would you reintroduce yourself
19 to Judge Miller, please, and tell us just briefly a little
20 background on yourself.

21 A. I lived in Greenville since 1981. I started out
22 my career in corporate and started a home sale business
23 and did that for a number of years and sold it in 2003 and
24 some other businesses and in development and just
25 different kinds of businesses.

Ballard vs. Warpath, et al

1 Q. Just briefly how did you become in contact with
2 Mr. Ballard back in 2007?

3 A. As I recall I had a phone call that asked if I
4 was interested in a project on the lake in developing some
5 town homes on the lake I was familiar with the lake and
6 with the development on the lake, and so I went to a
7 meeting put together by a third-party and Mr. Ballard
8 showed us his project and we talked about it and at the
9 time he was looking for an investor.

10 Q. As a result of that, to kind of move it alone,
11 y'all ended up signing this stock purchase agreement
12 that's part of the record here today, correct?

13 A. Yes, eventually we did. We declined the first
14 time around but Mr. Ballard called me back six or eight
15 weeks later and said he'd like to talk about it some more.

16 Q. And as part of that stock purchase agreement,
17 what did y'all agree to pay Mr. Ballard?

18 A. One million dollars for 80 percent of the
19 company.

20 MR. LIGHTSEY: Objection, Your Honor, this
21 has been covered in trial. We going to object to that
22 argument that the stock sold for 80 percent. That's the
23 law of the case now.

24 THE COURT: Go ahead.

25 BY MR. HOWARD:

Ballard vs. Warpath, et al

1 Q. When you entered into that stock purchase
2 agreement with Mr. Ballard, tell me what your opinion of
3 the project was at that time? Obviously you liked it.

4 A. We liked it. It was very interesting. I had,
5 like I said, had already done some things on the lake and
6 at the time I was looking for a really kind of a swan song
7 less to do really in my career. It was a presented to us
8 as a project presented to us to build cheap. I decided I
9 wanted to build it quality and keep it and rent it as a
10 lifestyle business. Earlier on there were a few things
11 right off the back that were a kicked in the stomach.

12 Q. Let me back up just a second, my intent here is
13 not to retry the case but I do want to ask you this
14 question, was it your state of mind, impression when you
15 paid the million dollars to Mr. Ballard that you were
16 paying a significant under value of what the value of the
17 company was at the time?

18 A. No, not at all. In fact, I thought it was a fair
19 value that we negotiated. At the time we paid that
20 million dollars, I thought we would be giving more revenue
21 than we thought we would be giving because it turned out
22 the slips wound up being one hundred instead of two
23 hundred that were performed.

24 MR. LIGHTSEY: Your Honor, I'm going to
25 object. This issue ---

Ballard vs. Warpath, et al

1 THE COURT: Just go on to his ---

2 THE WITNESS: I had no reason at the time I
3 wrote that check to think that it was high or low. It was
4 fair and I did it of free will.

5 BY MR. HOWARD:

6 Q. Had you been involved in several deals before
7 where people had bought from you and also you purchased?

8 A. Sure. I bought and sold a few companies, my own
9 company, and as we grew our company we did some merges,
10 acquisitions, some sales.

11 Q. Have you ever been involved in a transaction
12 where either yourself was willing to sell or somebody was
13 willing to buy something for an amount that was
14 significantly below the value of what it was at the time?

15 MR. LIGHTSEY: Objection, Your Honor. I
16 don't see where that's relevant.

17 MR. HOWARD: It's his experience.

18 THE COURT: Go ahead.

19 THE WITNESS: Have I been involved in a
20 transaction ---

21 BY MR. HOWARD:

22 Q. Where somebody was willing to take from you money
23 that was significantly less than what it was actually
24 valued?

25 MR. LIGHTSEY: Same objection.

Ballard vs. Warpath, et al

1 BY MR. HOWARD:

2 Q. Have you ever sold something significantly less
3 than the value was?

4 A. Not intentionally, no.

5 Q. Are you the present of Warpath?

6 A. I am.

7 Q. How long have you been the president of Warpath?

8 A. I'm thinking maybe 2008 or '09. There's only
9 been two presidents, Andy and myself.

10 Q. We heard some testimony about whether
11 Mr. Thoennes was president and representations on that.
12 Has Mr. Thoennes ever been president?

13 A. No.

14 Q. And the representation was, what would you
15 describe that as?

16 A. I didn't see the document but I assume that was
17 something that was typed up by someone and signed it.

18 Q. A mistake?

19 A. I would think so. It would have had to be, yes.

20 Q. Since 2007 and since the end of this matter, at
21 the end of this trial in 2010, tell me about all the
22 efforts that have been made by you in order to drive this
23 development home?

24 A. It really relates back to the kick in the stomach
25 I was referring to.

Ballard vs. Warpath, et al

1 Q. I understand but let's -- what I'd like to do ---

2 A. We'd been through all of the permitting process
3 and met with various home owner associations, some 16
4 regulatory authorities that we had to deal with. We with
5 SGA towards securing back up loans which we got the nod
6 on. We had to bring them back to the table which was the
7 next step. I been through three rounds of bank calls over
8 these years while the economy has been fluttering and been
9 through probably every bank that anybody could name. I
10 can't think of any that we haven't been to.

11 We actually had financing at 20 percent when
12 we brought this property. When we bought Warpath, 20
13 percent was not unusual at all and we had nods of interest
14 from both Palmetto Bank and two banks for funding Phase 1.
15 At the time those were non-issues. All of that changed
16 over the next three-and-a-half years as we continued to
17 seek the necessary permits and we spend another year
18 seeking off-shore funds and that's when Brad was involved
19 in signing some things.

20 And then I went through three different
21 equity parties to secure funding and as I mentioned
22 earlier Brad Seckinger was an intermediary. The Thomases
23 did owe him some money and that's how that came to play.
24 I met with Brad and we talked about a strategy of getting
25 funding. I dispatched Brad to Andy and he set up meetings

Ballard vs. Warpath, et al

1 both with me and with Andy with the funding agent -- he
2 was not an agent, he was a marina owner.

3 Q. Let me stop you there, why did you dispatch Brad
4 to go see Andy?

5 A. Because part of that deal was to buy Andy out and
6 that was just part of the whole package was to get funding
7 for Warpath and to buy Andy out. It was my impression in
8 talking with Brad that it fell apart based on the ---

9 MR. LIGHTSEY: Objection, Your Honor. He's
10 basing that on hearsay.

11 THE WITNESS: I was told and I've got an
12 email that says ---

13 BY MR. HOWARD:

14 Q. It's hearsay, Tim. It's fine.

15 A. And it says ---

16 MR. LIGHTSEY: Objection.

17 BY MR. HOWARD:

18 Q. Stop, stop, Tim, it is hearsay. It's okay. What
19 about Duke Power? What is your involvement with Duke
20 Power. They are the ones that issued the lease, correct?

21 A. I had been working with Duke on two levels. As
22 far as specific, it's been pretty much every sixty days,
23 updates, or meetings or whatever. They are very
24 interested in making sure this project goes forward and so
25 just developing that relationship over this number of

Ballard vs. Warpath, et al

1 years and letting them know pretty much everything and
2 turn of events.

3 On another level, which basically intersects
4 with this, I joined the Duke Energy Kiwi (inaudible) Lake
5 Holders Team and so we've been meeting every month and
6 subcommittees and sometimes twice a month over three years
7 now. All of the issues on the lake that has to do with
8 re-licensing so I'm engaged with all of the folks that I
9 had to originally go through to do permitting with, I am
10 now engaged with them on a month-to-month basis to bring
11 this license to bare for Duke Energy's benefit.

12 So everybody from FERC to DHEC to D&R, the
13 homeowner's associations, really everybody on the list,
14 USDA core of engineers are generally mentioned at almost
15 all of those meetings and I'm there as an executive of
16 Warpath.

17 Q. A couple of bindings have been discussed and can
18 you explain what bindings is, your impression of bindings?

19 A. I first ran across them -- I'm getting muddled
20 here -- but early in this stage when we were seeking,
21 pretty much the banks went out of business. I started
22 looking at equity partners and I talked with Peter Anzo
23 sometime back. Probably a year had passed. There was
24 some interest but not enough at the time because he was
25 having his own issues. He was the president of Mannings

Ballard vs. Warpath, et al

1 which owned several marinas in the eastern United States
2 and it was the worse economic times. It was a good
3 conversation but it was put on hold.

4 About a year or two later is when Brad
5 Seckinger put a deal together and he crossed back over
6 with Peter Anzo and so we reconnected at that time.

7 Q. Is there another group you were working with
8 also?

9 A. Yeah. The guy is in Georgia.

10 Q. Capital City.

11 A. This is an individual who had sold his business
12 in Atlanta and decided he wanted to be in the marina
13 business and they bought three marinas in Georgia and then
14 bought one in Seneca, Lake Harbor in Seneca.

15 Q. When y'all entered into the stock purchase
16 agreement with Mr. Ballard back in 2007 and the million
17 dollar check was paid, who was that check paid to?

18 A. Andy Ballard.

19 Q. That money went directly to Andy Ballard,
20 correct?

21 A. Yes.

22 Q. That money was not contributed to the treasure of
23 Warpath?

24 A. Right.

25 Q. And your efforts to seek financing, has anybody

Ballard vs. Warpath, et al

1 been willing to stroke you a check for you equity
2 interest?

3 A. No.

4 Q. The money you're contributing what is your
5 understanding of what it's being contributed for?

6 A. To build the project.

7 Q. It's not built at this time, correct?

8 A. That's correct.

9 Q. Did you ever make any promises of when you were
10 going to build the project?

11 A. Only to myself which was as soon as possible.

12 Q. And you've made efforts to finance and build the
13 project since it was signed, correct?

14 A. Daily activity of mine.

15 Q. You've seen the appraisal of Dr. Woodside,
16 correct?

17 A. I have.

18 Q. Do you recall what the amount was that
19 Dr. Woodside put on Mr. Ballard's shares?

20 A. Yes, I believe it was \$873,000.

21 Q. Do you think that from your prospective that was
22 a hire or lower number than you expected?

23 MR. LIGHTSEY: Objection.

24 THE COURT: Yeah, I don't think he's
25 qualified to interpret the equity.

Ballard vs. Warpath, et al

1 MR. HOWARD: I'm just basing it on his own
2 personal expectation and opinions as to the value of the
3 company.

4 MR. LIGHTSEY: Irrelevant.

5 THE COURT: Go ahead, over his objection

6 THE WITNESS: You're asking me what's in my
7 head okay and I thought it was high and I just paid him a
8 million dollars. If you do the math, it was about twice
9 as high, however, I want this behind me and I'm thinking
10 we agreed to have an appraiser appraise it and I accepted
11 it.

12 MR. LIGHTSEY: Objection. This is
13 irrelevant.

14 THE COURT: That's alright. He's just
15 talking about his state of mind and that's fine.

16 BY MR. HOWARD:

17 Q. Were you aware that there was an \$873,000
18 appraisal put on this front, the 20,000 shares that Andy
19 Ballard holds?

20 A. Yes.

21 Q. Is it your desire to retain this project?

22 A. I would like to build out the project and retain
23 it, yes.

24 Q. Is it your desire, understanding that to move
25 forward you would have to buyout Mr. Ballard?

Ballard vs. Warpath, et al

1 A. That's correct.

2 Q. That being your understanding for how long?

3 A. Since the judge ordered it.

4 Q. Do you remain today to make every effort to buy
5 Andy out?

6 A. I have. In fact, I've offered ---

7 MR. LIGHTSEY: Objection, Your Honor.

8 THE COURT: Yeah, we're getting into
9 settlement negotiations.

10 BY MR. HOWARD:

11 Q. We don't have to get into that but I can ask you
12 if you're willing to buy out Andy Ballard?

13 A. Yes.

14 Q. Assuming the \$873,000, do you have the present
15 ability to pay him?

16 A. No.

17 MR. LIGHTSEY: Objection, Your Honor.

18 MR. HOWARD: I think he can answer that
19 question, Your Honor.

20 MR. LIGHTSEY: His ability to pay has nothing
21 to do with ---

22 THE COURT: Well, subject to your objection.

23 BY MR. HOWARD:

24 Q. The plaintiff has requested 10 days, could you
25 pay it?

Tim Roberson - Cross Examination by Mr.
Lightsey
Berryard vs. Warpath, et al

1 A. No.

2 Q. Thirty days?

3 A. No.

4 Q. If ordered to pay in 10 days or 30 days, would
5 that result in a default?

6 A. Yes.

7 THE COURT: Don't ask him to speculate. He
8 can just say he can't do it.

9 BY MR. HOWARD:

10 Q. What has affected your ability at this point?

11 THE COURT: I don't need to know that.

12 BY MR. HOWARD:

13 Q. Would you be willing, if ordered by the Court, to
14 subject your finances to examination to determine what
15 could be paid by you and how long?

16 A. Yes.

17 MR. HOWARD: That's all the questions I have.

18 THE COURT: Any cross?

19 CROSS-EXAMINATION

20 BY MR. LIGHTSEY:

21 Q. Mr. Roberson, the stock purchase that you admit
22 you signed in 2007 obligated you to put up sufficient
23 capital necessary to get long term financing, didn't it?

24 MR. HOWARD: Objection, Your Honor, that is
25 not a subject for this case at this point.

Rick Thoennes - Direct Examination by Mr.
Howard Ballard vs. Warpath, et al

1 MR. LIGHTSEY: My point is he's made efforts
2 to get financing.

3 BY MR. LIGHTSEY:

4 Q. You've made efforts to get financing. You don't
5 have the financing, do you?

6 A. No, I do not.

7 MR. LIGHTSEY: That's all. Your Honor.

8 THE COURT: Okay. You can step down.

9 MR. HOWARD: We would call Rick Thoennes, Sr.

10 THE CLERK: Please place your left hand on
11 the Bible and raise your right hand..

12 RICK THOENNES, having been duly sworn,
13 testified as followed:

14 Please state your name for the record.

15 THE WITNESS: Rick Thoennes.

16 THE CLERK: Thank you. You may be seated.

17 DIRECT EXAMINATION

18 BY MR. HOWARD:

19 Q. Good morning.

20 A. Good morning.

21 Q. Just briefly just reintroduce yourself to the
22 Judge and tell us a little bit about your background.

23 A. Rick Thoennes, been in Greenville since 1969,
24 been involved mostly in the development and construction
25 business for those years and continued through that today.

Ballard vs. Warpath, et al

1 Q. You've been involved in this project since 2007?

2 A. Right.

3 Q. Been involved with Mr. Roberson, correct?

4 A. Correct.

5 Q. Have you made efforts along with Mr. Roberson to
6 pursue financing and development in this project?

7 A. We did. From the very beginning Tim and I and
8 Rick worked together in securing financing. Initially,
9 our bank was Greenville First and Tim's relationship with
10 Palmetto Bank so those were the two directions we went to
11 in May of 2007 and then from that time on even until today
12 we've been trying to secure financing.

13 Q. What has hampered the efforts?

14 A. Well, 2007 preceded the 2008 bust of real estate
15 so the recession prevented any effort to borrow money for
16 any kind of hospitality development. You couldn't borrow
17 money for houses. You couldn't borrow money for office
18 buildings. Banks had just basically shut down for
19 borrowing money unless you wanted to put up 90 percent of
20 the money, which is impossible. And it's remained that
21 way even until today. Hospitality is a difficult business
22 to secure financing for and that's where the marina falls
23 into because of its food restaurants and lodge and
24 everything that's involved in that particular project.
25 It's a hospitality project.

Ballard vs. Warpath, et al

1 Financing has been very difficult at best
2 ever since the recession took down the financing and it
3 has never returned for that particular segment. It's
4 coming back for housing and developments but very slow.

5 Q. Have your efforts been ongoing?

6 A. Yes.

7 Q. And continued to today?

8 A. Yes, weekly. Some weeks daily, but weekly.

9 Q. In addition to assisting the financing, what
10 other activities have you assisted with on the project?

11 A. I helped secure their permits along with Tim and
12 Rick and secured the engineering necessary to secure those
13 permits. We did the engineering to get a sewer system in
14 the project ever since the sewer system could not be put
15 on the property. We had to find other property so I
16 worked with engineers on what it would take to develop a
17 sewer plant to service that project because there is no
18 sewer out in front of the lake in that particular area.

19 So I worked with the engineers and the
20 architects and conceptional plan and we turned the
21 conceptional plan into actual drawings.

22 Q. Turn to Plaintiff's Exhibit 4a through d. Do you
23 recognize Exhibit 4a through d?

24 A. Yes.

25 Q. Can you explain to us what they are?

Ballard vs. Warpath, et al

1 A. They are basically proposals to different
2 financing entities to finance Warpath.

3 Q. When you speak of financing, explain what you
4 mean by that.

5 A. In a lot of cases it was two pronged. One was a
6 loan to build the project, and second was equity. Dakota
7 was going to invest in both a loan for the project and
8 equity to make up the difference between what would take
9 to build and what would be borrowed.

10 Q. Were any of the funds, as far as your
11 understanding, being contributed to the project by any of
12 these entities or discussed by any of them and did they
13 come back to you personally or Mr. Robertson personally?

14 A. None of it was to go to any of the partner's
15 personally other than in the construction. It wouldn't be
16 personal but it would flow through. We weren't going to
17 build it so we obviously would take draws from the loan to
18 pay the subcontractors in the construction, but there
19 wasn't to be any personal checks written to any of us.

20 Q. The draw schedules, the amount of estimate that
21 Warpath believed it was going to take to build the
22 project, who developed those?

23 A. I did for the most part.

24 Q. And this is something you had experience doing?

25 A. Yes.

Ballard vs. Warpath, et al

1 Q. You've seen Dr. Woodside's report, correct?

2 A. I have.

3 Q. And there are performers and other information
4 that are presented in that report, were you aware of that?

5 A. Yes.

6 Q. Who developed those?

7 A. I think he quoted some of the performers that I
8 had developed over the years. He had his own as well but
9 some of them were -- we gave him performers as well.

10 Q. The performers that you developed, were they
11 developed for this case or for this evaluation?

12 A. No.

13 Q. What were they developed for?

14 A. They were developed for potential investors and
15 for potential loan.

16 Q. The money being lent to Warpath to fund the
17 construction on this, what was the expectation of the
18 lender? Was it expected that you were going to pay that
19 money back?

20 A. Yes, monthly or quarterly payments out of the
21 revenues developed through Warpath.

22 Q. Turn to 4b. The information placed on these
23 diagrams, were they placed by yourself?

24 A. Yes, I think. It's been a long time. This was a
25 while ago.

Ballard vs. Warpath, et al

1 Q. You see in Item 3, we're referring to First
2 Ticonderoga?

3 A. Yes.

4 Q. Who is First Ticonderoga?

5 A. They were just a contact we had about a potential
6 lender.

7 Q. The loan amount is twenty-seven million, correct?

8 A. Correct.

9 Q. And if you turn to Page 5 of this document.

10 A. Okay.

11 Q. What is Page 5?

12 A. That's a development budget.

13 Q. And what is the approximate development budget in
14 this?

15 A. Twenty-seven million.

16 Q. And that's an estimate that you developed?

17 A. It is.

18 Q. And that's upon your experience in developing
19 those estimates?

20 A. Yes. In so far as numbers I got some hard
21 numbers from subcontractors.

22 Q. The rest of the numbers in there, how would you
23 have developed the appraised value that you have there?

24 A. The appraised value would be a simple mathematic
25 equation of -- net operating the income divided by

Rick Thoennes- Cross Examination by Mr.
Lightsey Ballard vs. Warpath, et al

1 whatever the cap rate would have been at the time and I
2 kept breaking anywhere from five percent to fifteen
3 percent depending on what the financial climate is for
4 that particular industry.

5 Q. And that value would certainly include the cost
6 of building it and other expenses?

7 A. That is actually it's about five years out
8 probably when the project is complete had history behind
9 it as far as income and expenses go.

10 Q. If you turn to 4c, third page, it identifies Rick
11 Thoennes as president.

12 A. That is just a typo. Someone else typed it up
13 and just didn't catch it. It was signed electronically so
14 I really -- the reason I didn't catch it.

15 Q. Do you have the present ability to buyout
16 Mr. Ballard?

17 A. No.

18 Q. What about in 10 days?

19 A. No.

20 Q. Thirty days?

21 A. No.

22 MR. HOWARD: That's all I have, Your Honor.

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MR. LIGHTSEY:

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1 Q. Mr. Thoennes, you said you had provided some of
2 the performers that were used by Dr. Woodside in coming up
3 to his evaluation; is that right?

4 A. I provided all of the paperwork that I had.

5 Q. And are you aware that we had requested that all
6 performers be produced to us in discovery?

7 A. Yes.

8 Q. And are you aware that the final set of
9 performers that were used by Dr. Woodside were not
10 produced to us until after we got Mr. Woodside's report?

11 A. I don't know. It wasn't intentional.

12 Q. You told on behalf of the defense that it was
13 represented to Dr. Woodside that these performers had been
14 given to Dakota Holdings; is that correct?

15 A. Yes.

16 Q. Are you aware that I contacted Dakota Holdings to
17 ask for that?

18 A. No.

19 Q. Did you have any conversation Dakota Holdings in
20 connection with that?

21 A. No.

22 Q. Do you know if anybody else did?

23 A. No.

24 Q. When you submitted these applications, you were
25 trying to defraud those investors, were you?

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1 A. No.

2 Q. You believed that the project would generate
3 sufficient money to pay those loans off?

4 A. Yes.

5 Q. You testified you also believed, at least the
6 time of the First Ticonderoga application that about five
7 years out the company would have operating income
8 sufficient to generate a sale value of about 36.7 ---

9 A. Where are you getting that?

10 Q. The 36.7 million dollar ---

11 A. Tell me where that is and I'll look ---

12 Q. 4b.

13 A. Yes.

14 Q. You testified that was determined by your
15 calculations of then operating income about five years out
16 over the capitalization rate that you used at that time?

17 A. Yes.

18 Q. You represented this to a third-party ---

19 A. That's right.

20 Q. That's the value of the company would have at
21 that point?

22 A. Right.

23 Q. And you also said that currently as is the
24 property was worth six million dollars; isn't that right?

25 A. Right.

Perry Woodside - Direct Examination by
Court Ballard vs. Warpath, et al

1 MR. LIGHTSEY: That's all my questions, sir.

2 THE COURT: Any redirect?

3 MR. HOWARD: No, sir.

4 THE COURT: Thank you. You can step down.

5 MR. HOWARD: Nothing further at this time,

6 Your Honor.

7 THE COURT: Dr. Woodside, come on up.

8 THE CLERK: Please place your left hand on
9 the Bible and raise your right hand, please.

10 B. PERRY WOODSIDE, having been duly sworn,
11 testified as follows:

12 Thank you. You may be seated. Please state
13 your name for the record.

14 THE WITNESS: B. Perry Woodside.

15 DIRECT EXAMINATION

16 BY THE COURT:

17 Q. I haven't done this, is 12 years. Tell us your
18 background, educational and work.

19 A. I have an undergraduate degree from Furman
20 University, Master's and PhD from the university of South
21 Carolina. I pursued an academic career that lasted 30
22 years. During that time I also developed a consulting
23 practice. I retired from teaching about five years ago
24 and joined an accounting firm for accounting services that
25 involved evaluations and businesses and two of our

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1 evaluations involved economic damaged and it's a fairly
2 broad spectrum of type of engagements that I've been
3 involved with over the years.

4 THE COURT: Does anyone want to voir dire him
5 or does everyone want to stipulate that he's an expert?

6 MR. HOWARD: No voir dire and I would
7 stipulate he's an expert.

8 MR. LIGHTSEY: I stipulate to the
9 admissibility of his report and have no challenge to his
10 qualifications.

11 BY THE COURT:

12 Q. Dr. Woodside, please, for the record, explain how
13 you got involved in this matter.

14 A. I was contacted by the two attorneys involved
15 here about offering an opinion as to the value of stock of
16 Warpath and my understanding was that I would be
17 presenting my opinion and that both parties would be
18 involved in the appraisal process in terms of its finding
19 information. It was not an adversarial proceeding at all.

20 Q. And did you encounter any problems while
21 performing that engagement with respect to obtaining
22 information?

23 A. No. Like many engagement you probably don't have
24 as much information as you would like, detailed
25 information as you would like, but what was represented to

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1 me was what was available.

2 Q. Did you study this issue and come to a
3 conclusion?

4 A. Yes, sir.

5 Q. What documents and resources did you rely on?

6 A. I had a fairly large volume of documents
7 everything from the conceptional plans for the project.
8 There were two design firms involved, the Ellis Group and
9 then Justice Design. I had renderings of elements of the
10 project. I had developed plans -- a history of
11 development plans that were created over time up until, as
12 a matter of fact, I think the last one 2012.

13 Q. Okay. Do you remember what is the beginning date
14 of the documents you examined?

15 A. Well, I went back to the original agreement among
16 the parties. The lease, I got a copy of that and things
17 dealing with legal issues that I'm not involved in. I got
18 tax returns for Warpath Development Inc. There is
19 documents surrounding applications or communications with
20 potential providers of funding. Some of those have been
21 discussed here this morning. It's my understanding is I
22 have a complete file of those documents.

23 Q. And you're familiar with recent and current
24 economic trends?

25 A. Yes, reasonable so.

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1 Q. And did you rely on your knowledge in those areas
2 as well in coming to your conclusions?

3 A. Yes, sir, very much so. I regularly monitor that
4 kind of activity. I also talk to people in the capital
5 markets when I was doing this appraisal. I talked to
6 developers of marinas, owners of marinas, lenders to
7 marinas about the conditions in the market at that point
8 in time. And the basic assumption I made was I appraised
9 this assuming the development had not taken place but was
10 to be undertaken if that makes sense.

11 Q. Yes.

12 A. So I was looking at conditions in the market at
13 that point in time. I've talked to owners of marinas who
14 have developed them, refinanced them, and tried to make
15 this appraisal relevant to the market as it existed at
16 that point in time as I could. So it's economic
17 conditions, but it's also lending and capital market
18 conditions.

19 Q. Okay. So you got a snapshot and what is the date
20 of that snapshot?

21 A. It's April, 2012.

22 Q. Okay. Tell us what's in the picture.

23 A. Well, what I did and this is where there is some
24 confusion, I value the stock of this company. The company
25 has the lease with Duke and the lease with the permit has

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1 value but the value is determined about what it could be
2 used for. In and of itself does not have any value. It
3 has to have some purpose where it could be put in in order
4 to be create. I developed a discounted cash flow for the
5 primary needs in determining the value of the stock.

6 I looked at what we would call a marketing
7 approach. There's virtually no meaningful data out there
8 for the purchase and sales of marinas that you could use
9 as a guideline. They're infrequent and the data is not
10 complete. It's very difficult.

11 The model that I developed reflects the
12 agreements that was reached among the parties where
13 capital was to be provided by Mr. Roberson sufficient to
14 obtain financing. None of that has happened to this point
15 so what I did was to look at what lending requirements
16 generally were in April of 2012. The equity requirement
17 at that point in time ranged from about 40 percent or 60
18 percent or somewhere in that neighborhood. You'd have to
19 have that much equity going into the deal to obtain normal
20 financing.

21 Now, the construction budget that I assumed
22 here was about twenty-one million dollars, round figure.
23 That means that ten million dollars is coming from the
24 lender and ten million dollars provided by Roberson. I
25 don't know exactly in what form, but he was going to

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1 provide it so it would support that loan. In other words
2 what he put in, that would be subordinated to the lender
3 more than likely, so it's about a 50/50 split basically.

4 The agreement provided that Mr. Roberson
5 would be paid back that support funding before there would
6 be any distributions or dividends back to the partners in
7 general. So we got a situation where the net operating
8 income developed by the project as it comes on line has
9 then got to satisfy the funding put in by Mr. Roberson as
10 well as satisfy the debt service requirements by the
11 lender. So I developed a very detailed schedule that
12 captures the repayment of debt from the lender as well as
13 repayment of Mr. Roberson's contribution.

14 The forecast or projection of net operating
15 income is based upon first of all the construction of the
16 project which was staged over time. In other words, you
17 begin construction, Mr. Roberson has to put in his money
18 first, the draws that was described earlier under the
19 contract that would be taken periodically, but a lender is
20 going to require that the equity portion be put in first
21 before they start lending their money. So Mr. Roberson's
22 money goes in first as this construction continues.

23 Then as Phase 1 is completed it begins and
24 then Phase 2 is under construction and when it begins its
25 operation it's delayed a little bit. So I accounted for

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1 the construction period. I accounted for the funds that
2 Mr. Roberson put in. I accounted for the funds that a
3 lender put in and then accounted for the for it all as the
4 operation begin to generate then operating income.

5 So what I then have is a schedule that
6 ultimately shows a return to the investors and then I make
7 an assumption at the end that the project is sold and I
8 think I did that, I can't remember off the top of my head,
9 but I think it was a year. The projection that I had at
10 the end of that period was thirty million dollars.

11 Some of the debt would be outstanding at that
12 point in time. What happens in a real estate development
13 like this is typically you have a construction term and
14 when that construction is completed, there may be some
15 term after that until the project reaches stabilized NOI
16 and at that point in time you refinance the construction
17 loan. Sometimes you can go into the permanent debt
18 markets to be able to do that, but the point is by the
19 time I made that sales assumption, not much of the debt
20 has been paid down because of the typical terms of the
21 loan. So what has to happen when a sales takes place is
22 any remaining debt has to be repaid and I subtracted that
23 out.

24 A big issue in a discounted cash flow model
25 is the required rate of return which then translates into

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1. a discount rate for discounting those expected returns and
2 I spent a good deal of time and effort trying to
3 accurately determine what a required rate of return should
4 be.

5 Now, when you talk about cap rates
6 determining that value of a property and the cap rate
7 maybe 10 or 11 percent, that is not an investor rate of
8 return because these projects are always leveraged. So
9 when you have that NOI and you divide it by .10, they were
10 talking about an example of .07 on one of these and gave a
11 thirty-six million dollars, that is not an investor return
12 at all. What you've got to do is account for the fact
13 that you're going to earn that NOI but then a good portion
14 of it is going to be financed. You're going to service
15 the debt and pay the debt back and then the residual left
16 over that provides the investor a return and that is a
17 risky residual.

18 I talked to lenders of marinas and similar
19 projects. I talked to developers, owners of projects and
20 look at it from both sides and the required rates of
21 returns that I got were in the neighborhood of -- the
22 lowest I got was 20 percent and I got three or four
23 opinions, observations, that would probably be 24, 25
24 percent. I chose 21 percent as a reasonable required rate
25 of return and it's an equity required rate of return.

Perry Woodside - Cross Examination by Mr.
Lightsey
Ballard vs. Warpath, et al

1 That what we would be seeking to account for
2 the delay in ever realizing the positive NOI once is ramps
3 up and the risks associated with it. The risk can be from
4 any source.

5 So I discounted all of that complex model
6 back to the spring and I assumed, I know there is maybe
7 some legal issues surrounding the percentage ownership but
8 for the sake of this appraisal, I appraised a 20 percent
9 ownership interest in the property. If it were some other
10 percent, you could certainly work off of that number to
11 determine.

12 The total value, I should have said that, was
13 four million, three hundred and sixty.

14 Q. Total value meaning?

15 A. Stock in the company.

16 THE COURT: Any questions anybody wants to
17 ask?

18 MR. LIGHTSEY: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. LIGHTSEY:

21 Q. Dr. Woodside, at my request you did a supplement
22 to your report, correct?

23 A. Yes, I did.

24 Q. Dated May 9th.

25 A. Yes.

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1 Q. And you provided a copy of that report, did you
2 not?

3 A. Yes, it was provided.

4 THE COURT: I'm not sure I ever got it.

5 MR. LIGHTSEY: I've got extra.

6 THE COURT: Okay.

7 MR. LIGHTSEY: This is a copy of the report
8 and the supplemental is in the pocket.

9 BY MR. LIGHTSEY:

10 Q. And the basis of the supplemental report was to
11 determine if the construction of the project could be done
12 when the final permit was issued in the summer of 2010 and
13 what effect that would have on the evaluation, correct?

14 A. Yes.

15 Q. And you determined based on those assumptions
16 that the total value of the company would be seven
17 million, one hundred and seventy-eight thousand?

18 A. That's correct but that's if the project had
19 begun then and we were looking at the value now which
20 would be the present value of what's expected beyond that
21 point.

22 Q. This may not be important but I think you
23 miss spoke at one point in your testimony. You said your
24 evaluation was done as of April of 2012 but I think it was
25 December of 2012; is that right?

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1 A. That's correct.

2 Q. And based on your supplemental analysis the total
3 value of seven million, hundred and seventy-eight thousand
4 calculated at 20 percent value would be one million, four
5 hundred and thirty-six thousand; is that right?

6 A. Yes, sir, that's exactly right. Now, when you
7 called me to do this rather than go back and redo
8 everything, I assumed the same cap rate when the sale of
9 the property occurs, which is pretty reasonable I think.
10 So I did go back and make adjustments to some of the
11 underlying assumptions but what it does calculate that if
12 it had begun then and go through by schedule on the
13 (inaudible) and to ramp up the revenues, if we were
14 sitting here at this point in time, it would already be
15 operational and it would have greater value.

16 Q. And as a legal matter if Mr. Ballard would be
17 determined to be entitled to 50 percent of the value of
18 the company, that would be approximately two and a half
19 million, is that right?

20 A. Yes, approximately.

21 Q. Now, as you testified you used the discounted
22 future benefits methods for doing this?

23 A. Yes.

24 Q. And the report says that discounted future
25 benefits method is appropriate when the future operations

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1 can be forecasted with some accuracy; is that right?

2 A. That's correct.

3 Q. The forecast that you were using for projected
4 revenues, expenses, profits and that operating income,
5 those were provided to you by the management of the
6 company, correct?

7 A. They were and I had a number of those projections
8 at the time and I used the ones that were developed in
9 late of 2012.

10 Q. And those were represented as being the ones that
11 were given to Dakota Holdings, correct?

12 A. I believe so but they are similar to ones that
13 were submitted earlier.

14 Q. In your report when you saw the information came
15 from management, we're really talking about the defendants
16 in this case, aren't we?

17 A. Yes, because they were the ones involved at that
18 times. I talked to Mr. Ballard and he wasn't privy to a
19 lot of information so I couldn't get it to him directly.
20 I certainly would have.

21 Q. Certainly. You are aware from reading Judge
22 Miller's prior order in this case, the defendants, the
23 management, that they were found to be engaged in
24 shareholder oppression.

25 A. Correct.

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1 Q. And specifically oppression of the founder of
2 this company.

3 A. Correct.

4 Q. And you would agree with me that at least in
5 terms of this evaluation proceeding, the defendants have
6 an incentive to minimize the evaluation, do they not?

7 MR. HOWARD: Objection, Your Honor.

8 THE COURT: Overruled over the objection.

9 THE WITNESS: I can't say whether they have
10 an incentive or not.

11 BY MR. LIGHTSEY:

12 Q. Well, they would obviously prefer an evaluation
13 as long as possible, wouldn't they?

14 A. They would prefer probably lower number than 100.

15 Q. And the performers that you used for your
16 evaluation and calculation, has a number of various items
17 to it?

18 A. Sure.

19 Q. And those were provided to you by the defendant?

20 A. Correct.

21 Q. And if those change, it would effect the
22 calculation of the value?

23 A. The one observation if you're talking about
24 incentives if you're looking for financing, you'd rather
25 have a higher number than a lower number. So I sort of

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1 put all of this in context and said this is the best
2 information I've got. I don't have anything other than
3 this and so I ruled out the work based on that. But one
4 point you made, discounted future benefits can make
5 projections that are reasonable. Commercial real estate
6 appraisals do this all the time.

7 They appraise properties on an as built basis
8 when there's nothing but a piece of dirt out there and
9 they go through basically the same process except the
10 appraiser is not going to figure out all the debt service
11 and figure out when he needs to return back to the
12 investors. They sort of stop half way down. The process
13 is the same for the top half of it, the revenue
14 projections, the construction budget and all of that.

15 Q. My question, Dr. Woodside, is not related to the
16 process but the source and the fact that they came from
17 the defendants.

18 A. Sure.

19 Q. You make an interesting point you said these were
20 numbers that were given to potential investors and if
21 anything they might want to inflate the numbers, did you
22 actually contact any of those third-parties to see if what
23 the defendants told you what they gave them?

24 A. No, I did not.

25 Q. You didn't verify their protective numbers, did

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1 you? In other words, you didn't go out and verify those
2 numbers of all of those numbers, did you?

3 A. You mean like contacting subcontractors?

4 Q. Yes.

5 A. No.

6 Q. And you did not purport to opine here as to the
7 reliability of the performers that were provided to you
8 that you used?

9 A. No.

10 Q. In fact, your report makes it very clear that you
11 relied solely on management and the actual numbers could
12 be materially different, correct?

13 A. If it comes to that, it could be different.

14 Q. You became aware after you first circulated your
15 report that we had not been given the performers that were
16 provided to you. You read the email exchange about that?

17 A. I did and I was not called the exchange documents
18 or anything but you did make me aware of that.

19 Q. Does that lead you to question the reliability at
20 all the fact that they were not provided?

21 A. I can't comment on that at all.

22 Q. If it were in fact the case what you were told
23 was given to Dakota Holdings was not given to Dakota
24 Holdings, would that cause you to question the reliability
25 if you were misled about that?

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1 MR. HOWARD: I object to the question here.
2 There is nothing factually in evidence to suggest that
3 these numbers were not provided to Dakota Holdings.

4 THE COURT: I don't know if he's setting the
5 whole thing up for something but all he's doing is ---

6 MR. HOWARD: Assuming facts not in evidence.

7 MR. LIGHTSEY: I'm not trying to set up
8 anybody, Your Honor. I have information to hand up to
9 you, a copy of the email that I have of Clem Anderson who
10 was with Dakota Holdings, their principal, where he was
11 trying to get the performers that they were provided and
12 all he could get was a promotional packet which was years
13 old. Just for the record if we could mark that as Court's
14 Exhibit 1 so we could have that in the record.

15 (Email marked as Court's Exhibit No. 1 for
16 identification.)

17 MR. HOWARD: I would object to that for the
18 record, Your Honor. It's not addressed to me and I can't
19 tell -- there is nothing to actually confirm this email.

20 MR. LIGHTSEY: The reason I brought it up is
21 I was accused of saying something that I had no basis for.

22 THE COURT: Okay. It's entered as a Court's
23 Exhibit.

24 BY MR. LIGHTSEY:

25 Q. The company itself obviously has no operating

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1 history at this time, does it, Dr. Woodside?

2 A. Not really. It's incurred expenses but --

3 Q. But it hasn't broken ground.

4 A. No.

5 Q. Doesn't have any operating revenues, correct?

6 A. Correct.

7 Q. And as you know there's really no way to
8 determine the projections that you were given that you
9 relied on if those will come to pass or not likely that
10 those will come to pass, is there?

11 A. Only if you can divine the future.

12 Q. Could be worse, could be better, could be very
13 different, couldn't it?

14 A. It's possible, yes.

15 Q. Are you opining today that it's likely those
16 numbers will come to pass?

17 A. They are the result of my analysis based on my
18 assumptions.

19 Q. You were given those numbers by the defendants,
20 correct? I'm talking just about the performers.

21 A. Yes, but there are a series of those performers
22 and over the last year or so or a couple of years, I
23 guess, they were fairly consistent.

24 Q. Now, you said that you determined that the equity
25 required to obtain financing would be in the range of 40

Ballard vs. Warpath, et al

1 to 60 percent of cost of construction or cost of
2 development?

3 A. Yes.

4 Q. And so the twenty-one million dollars estimated
5 construction budget that would require Mr. Roberson under
6 the agreement to put up I think you said nine million --
7 in the range of ten million dollars?

8 A. Yes.

9 Q. And you are aware, of course, that he has not
10 done that.

11 A. That's correct.

12 Q. And based on this morning's testimony, it appears
13 he is unable to do that, would you agree?

14 A. I heard the testimony and I think that's a
15 reasonable statement based on current conditions.

16 Q. Now, you mentioned in terms of the discount rate,
17 22 percent discount rate you used. That was an equity
18 rate of return, correct?

19 A. That's correct.

20 Q. Would you agree that an investor was able to
21 leverage his investment by borrowing money that he was
22 investing from, that that would, under the weighted cost
23 of capital approach, that would cause the required rate of
24 return to be less than the 22 percent equity rate of
25 return?

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1 A. A weighted average cost of capital would clearly
2 be less.

3 Q. And isn't that the approach that is in fact
4 advocated in the draft treatise you cite in your report?

5 A. Well, it depends on the nature of what you're
6 doing. What I was calculating is the cash flow that would
7 go back to the equity holders and in this particular case
8 where you've got to pay down the debt, pay down the
9 whatever you want to call the Roberson contribution -- by
10 the way, that contribution has got to be some form of debt
11 that has to be subordinated debt because of IRS rules.
12 You certainly don't have to use a weighted average cost of
13 capital and use that approach. It makes more sense to do
14 a discounted cash flow to equity because the weight
15 average cost to capital assumes a constant capital
16 structure which means the debt to equity ratio doesn't
17 change. What you got to do here is reflect the fact that
18 Mr. Roberson has got to get paid back before there's any
19 cash flow that will accrue to the owners of Warpath.

20 Q. I don't really understand all that but isn't it
21 true that treatises that you cite advocates weighted
22 average cost of capital approach to determine the discount
23 rate?

24 A. It advocates that but it also recognizes the
25 other. It's not to the exclusion to the other at all.

Perry Woodside - Cross Examination by Mr.
Howard vs. Warpath, et al

1 Q. Isn't it true that you, yourself, have used the
2 weighted average cost of capital approach to evaluating
3 interest in the company?

4 A. If the underlying facts support it, I use it. In
5 this case, I don't think it was appropriate.

6 Q. If it were used here, would you agree that if any
7 investor was able to leverage their investment by
8 borrowing money that that would result in a lower discount
9 rate under the weighted average cost of capital approach?

10 A. The discount rate is a lower number but then you
11 have to subtract all the debt from the conclusion. It's a
12 difference there.

13 MR. LIGHTSEY: Nothing further.

14 BY MR. HOWARD:

15 Q. Dr. Woodside, a couple of questions. Doctor, in
16 the course of receiving documents, you received
17 documentation of efforts made to secure financing,
18 correct?

19 A. Yes.

20 Q. And you would agree with me that Mr. Roberson's
21 obligation could be met by securing capital from other
22 sources, correct?

23 MR. LIGHTSEY: Objection. That's a totally
24 legal question.

25 BY MR. HOWARD:

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1 Q. ~~It could come from another source, though,~~ not
2 just Mr. Roberson, correct, that ---

3 THE COURT: I think Dr. Woodside said that he
4 thought Mr. Roberson's contributions could be leverage.
5 Didn't you say that?

6 THE WITNESS: It could be but that would be a
7 private transaction of him. I read the agreement ---

8 BY MR. HOWARD:

9 Q. I guess my question is you're just assuming money
10 is being put into it. It doesn't necessary matter where
11 it comes from, correct?

12 A. That's correct.

13 Q. From the stand point of having to --

14 A. It's simply provided.

15 Q. And from the documentation you received, there
16 have been efforts to get it provided?

17 A. Yes.

18 Q. Let's go back to the May 9th supplement and
19 Mr. Lightsey indicated he made that request of you. Do
20 you recall that?

21 A. Yes.

22 Q. How was that made? Was that made by phone,
23 email?

24 A. I think both if I recall. I don't know
25 initially, but I know we talked about it on the telephone

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1 just so I understood and got some clarification of just
2 what he was asking for.

3 Q. Was I on that phone call or those emails, do you
4 recall?

5 A. No.

6 Q. The documents that you received -- the performers
7 that you received from my clients, what do you call being
8 explained that those documents were?

9 A. Well, they were actually used for a number of
10 purposes. One was their own internal analysis of what the
11 project was all about. What is the project going to cost,
12 what are the elements of that cost, and what are the
13 drivers of the revenues for the project.

14 Q. The May 9th report that you issued, the
15 supplement, I want to understand that because I followed
16 up with Evans in your office and I think he was the one
17 that sent it to us. This is the way I understand it, you
18 set the value as of December 31, 2012, correct?

19 A. Correct.

20 Q. And you're assuming numbers that were created in
21 that time frame.

22 A. You're talking my model or the information?

23 Q. The model that you developed was assuming numbers
24 as of December 31, 2012, correct?

25 A. Correct.

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1 Q. What Mr. Lightsey to do was go back and assume
2 that this project had been built in 2010, correct?

3 A. Had been started.

4 Q. And by started meaning that the financing had
5 been obtained and the development started; is that right?

6 A. Yes.

7 Q. Because that's what your whole appraisal assumes
8 that all the things that need to be done to build this
9 project, get the money, get the dirt moved around, get is
10 constructed and operational was done.

11 A. Yes.

12 Q. In your May 9th, you don't go back and look at
13 the numbers that are consistent with what was from 2010,
14 correct?

15 A. All this analysis ---

16 Q. You just shifted it.

17 A. That's all I did, yes. Instead of my appraisal
18 because there was nothing out there and I think I talked
19 with both of you about the basic assumption I was making
20 was that what's the value made for the project, what we're
21 doing here, and so my initial report assumes that the
22 funding is obtained and the construction begins and then
23 you have the ramp up and so forth. This revised report
24 assumes that that schedule began back in the summer of
25 2010 so we would be through the schedule a good bit.

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1 Roberson even today would not have been paid
2 back his money but it shifts and that's exactly right.

3 Q. That's what I was getting to. Essentially like
4 the way I read your report is that it assumes that the
5 construction had begun by the end of 2013; is that right?

6 A. Yes.

7 Q. And so what you did is just shifted it back three
8 years and say it's not 2013 but we're going to assume it's
9 begun in 2010.

10 A. Right.

11 Q. And then just project forward in the same
12 numbers, the same everything and just shift it back three
13 years.

14 A. Right.

15 Q. Factual, were you provided anything that
16 construction had begun in 2010?

17 A. No, it was an assumption I made.

18 Q. And factually you had not been provided anything
19 from Mr. Ballard that said Mr. Ballard we promise you that
20 we're going to start this construction in 2010?

21 A. No, I have not seen any documents to that effect,
22 no.

23 Q. As to the numbers you used in development of the
24 model, did you have conversations with Mr. Ballard about
25 numbers on the project?

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1 A. Sure.

2 Q. Did he provide you with any performers or numbers
3 of the project?

4 A. I don't know if he had documents or not, I don't
5 recall. He possibly could have but I actually visited the
6 site with him.

7 Q. It appears that they're arguing that there's
8 something wrong with the numbers that management provided
9 to you and I'm asking did Mr. Ballard have an opportunity
10 to provide his own? Did you give him that chance?

11 A. Perhaps. He didn't have any performers that I
12 know of.

13 Q. And he hasn't submitted anything further to you?

14 A. No.

15 Q. Did he or his lawyer ever question or ask you
16 question about why you use those numbers or question the
17 use of those numbers?

18 A. Nothing other than today.

19 Q. The numbers that you used, those were provided to
20 you by Mr. Thoennes, correct?

21 A. Yes.

22 Q. And did you see the entire email exchange about
23 those numbers after Mr. Lightsey questioned you?

24 A. I don't know.

25 Q. I was just wondering because I was just seeing if

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1 you understood that the reason those numbers didn't get
2 delivered to you was the fault of our office and not
3 Mr. Thoennes, did you know that?

4 A. No, I really didn't.

5 Q. You were saying you weren't aware of that at the
6 time and I just wanted to make sure. From a risk stand
7 point, where did this project hit for investors? Is it a
8 low risk investment or a high risk investment?

9 A. Well, I think the best way of beginning that
10 answer is by saying a real estate investment because
11 that's basically what that is a real estate development.
12 It's got several different components. It's on the higher
13 end of the risk spectrum. If you've got an apartment
14 complex, a 400 unit apartment complex, in a reasonable
15 market, that's a lot different risk profile than a marina
16 on Lake Kiwi. And that's the reason you see different cap
17 rate reflected in the market place. You don't see any
18 marina cap rates much because they're not published but it
19 would be on the higher end of the risk prospective.

20 Q. Now, the assumption in your model is that in
21 providing this money into it as of the time that you
22 provide it in the financing is not obtained and is not
23 built yet, correct?

24 A. Correct.

25 Q. It is to be built.

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1 A. That's correct.

2 Q. And there's certainly a risk component to
3 obtaining financing; is that correct?

4 A. Yes.

5 Q. There is a risk component as to what it is
6 actually going to cost, to build, could be higher or lower?

7 A. Sure.

8 Q. And there's a risk component as to whether or
9 not, in this case while we're hopeful, but whether or not
10 the income and the revenue that is projected to be
11 obtained there's a risk there that there won't be,
12 correct?

13 A. That's correct. And the discount rate that I
14 used considered those risks.

15 Q. How does it consider those risks?

16 A. Well, if it were a treasury security where you'd
17 have very little risk, you'd have a much different
18 required rate of return, maybe three percent. Many
19 closely held businesses required rates of return. They
20 could be north of 25 percent if you were just opening a
21 lot of just risky enterprises, but this a real estate
22 oriented one. And, again, I talked to developers about
23 what their required rate of return would be. And the
24 thing you got to remember is what is the value in the
25 stock of this entity? So if I say it's worth 4.367

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1 million and somebody paid that and bought all the stock,
2 would they then have the lease, the permitting, the
3 drawings that have been done to date, all of that is what
4 you would have and how did you get at that 4.367 million
5 would be I'll have that and can I make it happen and earn
6 a rate of return and you discount all of that can it
7 happen at a rate that reflects that risk.

8 Q. The method you used in generating your discount
9 rate, you ever heard of the build up method?

10 A. Sure.

11 Q. Is that what you used?

12 A. Sure, sure.

13 Q. Why don't you explain the build up method?

14 A. You start off with a risk free rate and then add
15 components of risk to get to what you think is a
16 reasonable required rate of return for the particular
17 entity that you're appraising. The most subjective part
18 of it is what is typically referred to as a company
19 specific risk premium. That gets you away from all these
20 trade market rates of return, start translating it back to
21 Warpath Development Inc on Lake Kiwi, South Carolina.

22 Q. And in this case, you started with the risk free
23 which according to your report was two-and-a-half percent?

24 A. I believe that's correct. Yes.

25 Q. Where did you pull the two-and-a-half percent

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1 from?

2 A. You can get it from any number of resources, but
3 we pull these off of a data service called Bloomberg.

4 Q. The next level of build up that you indicated is
5 a common stock equity premium. Could you explain what
6 that was?

7 A. That's the additional required rate of return
8 that on the average would entice an investor to move out
9 of treasury securities into trade securities in the market
10 place general average. In other words, you've got to have
11 another 6.7 percent return to get you out of treasury into
12 equity.

13 Q. Treasury is going to give you that guarantee
14 two-and-a-half and the way you described it common stock
15 equity premium and that's large capitalized stock; is that
16 correct?

17 A. That's correct.

18 Q. And that's sort of moving into, for lack of a
19 better way of putting it, stocks that maybe trade on the
20 New York Stock Exchange.

21 A. That would be reasonable.

22 Q. And there was a number that you put on that of
23 6.7 percent?

24 A. Correct.

25 Q. And that's developed from where?

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1 A. That comes from the publication there Morning
2 Star. It has an equity premium there. There are other
3 sources that are updated periodically. You can pull this
4 information from several sources. It's a publication.

5 Q. This Morning Star is that one that's commonly
6 used?

7 A. Yes.

8 Q. By one such as you who is looking to create a
9 discount rate on the build up method?

10 A. Yes.

11 Q. The next number that you added -- let me
12 understand on build up is you take the two-and-a-half
13 percent and add a 6.7 to it, correct?

14 A. That's correct.

15 Q. And the next one you add to it was 6 percent
16 which is the risk adjustment for size of company.

17 A. Correct.

18 Q. This is also taken from the Morning Star report,
19 correct?

20 A. Correct.

21 Q. And under that scenario we're still talking about
22 a publicly traded company.

23 A. Correct.

24 Q. We're talking about a smaller capitalization?

25 A. That's correct. We're heading down to smaller

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1 companies but they're still trading.

2 Q. They're still trading, but they're riskier than
3 the larger capitalized companies, correct?

4 A. That's true, yes.

5 Q. And so you start with your two-and-a-half, you
6 add your 6.7 and then 6 which is generated that and then
7 you get to the company's specific risk premium which was
8 seven, correct?

9 A. Correct.

10 Q. And like you said from a build up, that's when
11 you're building up to Warpath, which is a four person
12 entity, correct?

13 A. Correct.

14 Q. And it's not traded.

15 A. Correct.

16 Q. And it has a different level of risk than a small
17 cap stock, right?

18 A. Yes.

19 Q. And how did you come about assigning it seven?

20 A. This was done -- it's really my conclusion as to
21 what a reasonable number would be for that company's
22 specific risk premium but it did involve the discussions
23 with the marina owners and developers what that market at
24 that time what a required rate of return would be so that
25 makes up the difference if you look at it that way.

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1 Q. All total you came up with a rate of 22 percent,
2 right?

3 A. Yes.

4 Q. And that was rounded, right? When it started it
5 would have been 22.3 and you rounded it to 22.

6 A. Correct. I think I misspoke earlier. I think I
7 said 21.

8 Q. I just wanted to correct that. At the end of the
9 day with your determination, your model, you put on his
10 20,000 shares representing 20 percent interest, you placed
11 a value at eight hundred and seventy three thousand,
12 correct?

13 A. Yes.

14 Q. What do you recognize 4b as?

15 A. This is a document entitled a, "Conditional loan
16 commitment."

17 Q. The issuer of this is Dakota Holdings, LLC?

18 A. Yes.

19 Q. Have you looked at documents such as this before?

20 A. Yes.

21 Q. Based on your experience, what does it appear
22 that Dakota Holdings is doing?

23 A. They are advancing twenty-four million dollars
24 that they expect to get repaid and it has got two
25 levels of pricing, eleven percent preferred return and

Ballard vs. Warpath, et al

1 then an eight percent return on straight debt. It's got a
2 five-year term so basically what this is assuming is they
3 advance twenty-four million dollars to get the project
4 built. They will get paid back, it says equity split
5 60/40 total paid back, then 50/50 by seller.

6 What basically is going to happen by the end
7 of five years either one has got to buy the other out or
8 sell it on the open market. It's like a five-year term
9 but it's got two levels is what it amounts to.

10 You could calculate the return to the owners
11 of Warpath Development, Inc., if you went through -- some
12 of this is a little vague -- but if you went through it,
13 if they are advancing twenty-four million dollars, 9.6 at
14 eleven percent -- 9.6 million and 14.4 at 8 percent,
15 that's only two million dollars a year in interest. So my
16 projections of NOI and operating income would have to have
17 a reduction for the interest paid and then the owners of
18 Warpath would get 40 percent of the residual, of what's
19 left over.

20 They say that it would defer the interest on
21 the preferred for one to three years but that doesn't mean
22 it goes away. So they'll have to catch up that interest
23 payment after one, two, or three years. That's unknown.
24 But then when you sell it at the end and if it sells for
25 thirty million or whatever the number is, then that which

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1 has not been paid back would have to be paid back. If
2 it's all been paid back before then -- well, you couldn't
3 pay it back. It wouldn't be enough cash flow to pay it
4 back. You couldn't even begin to pay it back. You'd have
5 to pay whatever is due which would be a large number.

6 I don't think if you work through this with
7 several scenarios, I don't think you'd come up with a
8 number that's as high as my appraised value of the stock
9 the way I read this document. I actually did this a long
10 time ago.

11 Q. As compared to a general equity investor --
12 you're evaluating Mr. Ballard's interest as an equity
13 investment, correct?

14 A. Yes.

15 Q. Not a lender who has got an expected rate of
16 concern? This is somebody who is putting his capital at
17 risk with the desires that it come back to him at some
18 point?

19 A. Yes.

20 Q. Well, it be the sale or through distributions; is
21 that correct?

22 A. Yes.

23 Q. And in this case, you have your physical lender,
24 correct?

25 A. Correct.

Perry Woodside - Recross Examination by Mr.
Lightsey
Howard vs. Warpath, et al

1 Q. And that would certainly account for the lower
2 percentage they are willing to take versus you calculated
3 during the 22 percent?

4 A. Yes, but this is the debt he's going in. The
5 owners of Warpath Development, if they commit to this
6 twenty-four million dollars, they still got to build the
7 project with all the intended risks, they've got to
8 generate revenue with the intended risks, they've got to
9 operate within the economy with the intended risks, so
10 they equity required rate of return is something that's
11 not reflected here.

12 MR. HOWARD: Thank you.

13 MR. LIGHTSEY: I have a few questions, Your
14 Honor.

15 THE COURT: Briefly.

16 MR. LIGHTSEY: I'll be brief.

17 BY MR. LIGHTSEY:

18 Q. You stated, Dr. Woodside, that that had not
19 raised any concerns about the accuracy of the numbers that
20 the defendants were providing to you. I'd like to hand
21 you a email I sent to you and copies Mr. Howard on and
22 have it marked as Plaintiff's Exhibit 10.

23 (Email marked as Plaintiff's Exhibit No. 10
24 for identification and admitted into evidence.)

25 BY MR. LIGHTSEY:

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1 Q. I'd like to hand you what we've marked as
2 Plaintiff's Exhibit 11 and ask you if you remember that
3 email that I sent to you in December of last year or even
4 the beginning of the year -- this is actually to John
5 Evans. John Evans is your associate, correct?

6 A. Correct.

7 Q. My initial question is do you remember getting
8 this email?

9 A. I do. It was back in December.

10 Q. If you go down those two-thirds it says in
11 several places the engagement letter states that, "will
12 rely on the company's management for financial records
13 information," et cetera, and I did raise some concerns
14 there, did I not, Dr. Woodside about the credibility of
15 the defendants?

16 A. Yes.

17 Q. And the reliability of whatever material that
18 they have provided to you.

19 A. Yes, you had issues apparently.

20 Q. And yet still you based your evaluation on
21 financial projections that were given to you by the
22 defendants that you never audited; is that right?

23 A. That's correct, but these financial projections
24 were created at different times and some of them were
25 time-stamped. They appeared to be generated for the

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1 purpose of analyzing the investment and perhaps obtaining
2 funding.

3 Q. After using the defendant's numbers to come up
4 with your projection, you came up with the value for
5 Mr. Ballard's stock that was actually less than what
6 Mr. Roberson paid for the same number of shares in 2007,
7 correct?

8 A. That's correct.

9 MR. LIGHTSEY: No further questions.

10 Your Honor, I don't want to blind side
11 anybody but the nature of my objection to Dr. Woodside's
12 report is that he does not opine that this number is most
13 probably the fair value to a reasonable degree of
14 certainty in the field which I think is the standard of
15 admissibility for expert opinion. I don't see how he can
16 say that given what he's candidly acknowledged and stated
17 in his report to the effect that he's relied on numbers by
18 management and does not know whether they're accurate and
19 gives no opinion as to their accuracy and that is the
20 foundation of his mathematical calculations. That is the
21 nature of my objection.

22 THE COURT: Thank you very much. You can
23 step down, sir.

24 I don't have any more witnesses.

25 MR. LIGHTSEY: I would like to put Dr. Alford

Charles Alford - Direct Examination by Mr.
Lightsey
Ballard vs. Warpath, et al

1 up.

2 THE COURT: How long do you think it would
3 be? Here's my concern, I have a jury coming at 2:00,
4 court personnel have not had an opportunity to each lunch,
5 so what do you think ---

6 MR. LIGHTSEY: I think it could be done in 45
7 minutes but you do have a jury coming.

8 THE COURT: I'm less concerned about the jury
9 than court personnel. I can keep them locked away but
10 court personnel I have to deal with.

11 Okay, we'll take about five minutes.

12 (Whereupon, there was a brief break.)

13 MR. LIGHTSEY: We'd like to call Charles
14 Alford to the stand.

15 MR. HOWARD: I renew my objection.

16 THE COURT: Over your objection.

17 THE CLERK: Place your left hand on the Bible
18 and raise your right hand.

19 CHARLES ALFORD, having been duly sworn,
20 testified as follows:

21 Please state your name for the record.

22 THE WITNESS: Charles Alford.

23 THE COURT: Apart from your objection, do you
24 stipulate that he's qualified as an expert.

25 MR. HOWARD: I don't have any problem with

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1 his qualifications.

2 MR. LIGHTSEY: I'll skip over that.

3 DIRECT EXAMINATION

4 BY MR. LIGHTSEY:

5 Q. Dr. Alford, in light of our time emergency and in
6 view of the stipulation, we'll just skip over your
7 background and qualifications. In the notebook I handed
8 to the Court and has been marked as Plaintiff's Exhibit
9 12, there is a copy of your current CV under Tab 7; is
10 that correct?

11 A. It is.

12 Q. Thank you. Just briefly tell the Judge how you
13 initially got involved in this case.

14 A. Mr. Lightsey called me just to consult with him
15 on the case to read Dr. Woodside's report and give him
16 reactions to it. I did and I gave him reactions. I read
17 it, I give the standard check arithmetic and checked the
18 assumptions and I gave you a reaction to it.

19 Q. In general, what is your opinion of Dr. Woodside?

20 A. Well, Dr. Woodside is a friend of mine and we're
21 colleagues and he's the court's expert and I have nothing
22 but good things to say about him. I hold his work in high
23 regard.

24 Q. And you, yourself, served as a court expert in
25 other cases?

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1 A. I have.

2 Q. After your initial review of his report, were you
3 asked to take a look at the report in light of the
4 proposal that had been made by Dakota Holdings?

5 A. You indicated that there was such a document and
6 I looked at that and then expressed a little bit of
7 surprise at their proposal in light of Dr. Woodside's
8 appraisal and began to work some numbers.

9 Q. Why did you initially feel a little bit surprised
10 at their proposal?

11 A. Well, from what I could see just first glance
12 Dakota Holdings wasn't expecting to get the kind of return
13 that Dr. Woodside had opined that you should get as return
14 to capital though you can't look at it -- you have to be
15 very careful with it because part of the money they're
16 putting in was a loan, part of the money they were putting
17 in was preferred stock. They were covering themselves in
18 as many ways as they could. They were planning sixty
19 percent of the equity until it was sold. They were going
20 to get preferred stock dividends. I assume that they were
21 going to cumulative. So even though they were deferred,
22 they were going to get a lot of their money up front.

23 So you couldn't just look at their capital
24 investment and say, well, there the value of a company or
25 the value of half of the company because they were not

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1 going to make all the investment up front. They were
2 going to defer some of it and they were hedging their bets
3 every way they could.

4 Q. We'll run through what you did, but as a general
5 proposition, can an investor get less than 22 percent on
6 an investment but still be given a 22 percent equity rate
7 of return?

8 A. Sure, and Dr. Woodside hit on that and the issue
9 is leverage. It's not a complicated idea. If someone is
10 willing to pay you for your ownership so that the total
11 return on the money you put in is less than, say, 22
12 percent, but if they are leveraging it heavily, they can
13 earn 22 percent on their capital because of the
14 leveraging. That's when you hear about real estate cap
15 rates and 11 percent, 12 percent that's because people who
16 invest in real estate leverage those investments so they
17 get a return on their capital, they expect to at least,
18 risk adjusted, much higher than that so-called cap rate of
19 11 percent because they're leveraging.

20 Q. Let's turn to Tab 1 in your note book and tell
21 the Judge what that is and what you were doing there?

22 A. Here's what I did, I looked at the Dakota
23 Holdings proposal in light of Dr. Woodside's analysis and
24 his analysis was based on as I read his report information
25 and management given to him, so what I did was to say,

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1 okay, if Dakota Holdings is willing to buy into this
2 company, it's going to have to invest according to this
3 schedule that Dr. Woodside identified and that's what Tab
4 1. There would be draws essentially every other month, an
5 initial draw of 2.6 million dollars and then draws just
6 about every other month for a couple of years. That money
7 would have come from Dakota Holdings.

8 Although Dakota Holdings had indicated that
9 they would chunk in twenty-four million dollars, I would
10 base this on their putting on 21.45 million. That's the
11 amount of total investment that was identified in
12 Dr. Woodside's report and I assume they wouldn't put the
13 money in up front, they would put the money in as it was
14 making.

15 Q. And then what did you do with this information?

16 A. Well, I assume that their investment would be
17 proportionate between preferred stock and loans and they
18 had identified essentially the proportions and in their
19 proposal they had indicated, as you've already heard, 9.6
20 million in equity and 14.4 million in debt. So I took
21 that ratio and I applied to each of these draws. I
22 assumed that initially and then periodically Dakota
23 Holdings would expect to put in either in terms of loaning
24 to the entity or investing in preferred stock. Those
25 amounts were identified by Dr. Woodside and proportionate

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1 to what they had identified as their investment either in
2 terms of the loan or preferred stock.

3 Q. Let's turn now to Tab No. 2 in your notebook and
4 I've got a copy of the first page of that if you want to
5 use that. If you could just using the first page of Tab
6 No. 2, explain to the Judge what you're doing here and
7 what these calculations were intended to do?

8 A. This is a replication of their proposal and there
9 were several elements to it. There were the draws and
10 this is only the first table. There were four or five
11 tables and it identifies the initial draw and then the
12 draws at the beginning of each subsequent month based on
13 what Woodside identified.

14 The net operating income also comes from
15 Dr. Woodside's report so for the first 14 months, they
16 weren't going to make any money and then they were going
17 to make seven thousand dollars on the 15th of the month so
18 they were never making very much money until a couple of
19 years in to the project.

20 Now, how that money would be used? Well,
21 there's a section of this dealing with debt service.
22 There's a section dealing with preferred stock dividends
23 and then there's a section dealing with other cash flow to
24 Dakota Holdings or other owners of the company.

25 The first obligation would be debt service

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1 and with regard to debt service, we can determine what the
2 balance would have been on the debt based on the draws
3 each month. The interest is eight percent -- a twelfth of
4 eight percent since we're dealing with months and you see
5 that points on loan of four hundred and thirty-two
6 thousand dollars? This Dakota Holdings proposal says
7 there would be three points on the loan. I assume three
8 points on the total 9.6 million although they weren't
9 ultimately have to loan that much. So I assumed that the
10 company right off was going to owe Dakota Holdings another
11 four-hundred and thirty-two thousand dollars in loan
12 points.

13 The cash in is interest that Dakota Holdings
14 would actually be paid but they could only be paid out of
15 the profits. So you can see for the first 13 or 14 months
16 that it's just accruing interest and I assume the interest
17 would compound month after month after month and then
18 finally in month 15 they start paying a little bit but the
19 amount they can pay is limited to their operating income.
20 They can't pay anything that they don't have.

21 In this particular model, I assume they would
22 never pay more than interest. They would not pay the debt
23 back until the end. I ran it different ways. I ran it
24 based on -- this is an eight year deal and I also did a
25 five year deal because that's what Dakota Holdings

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1 proposed. I did it based on paying debt back as soon --
2 pay the principal down as soon as they had some extra
3 money to do it and I assume they wouldn't pay the
4 principal down until the end of the deal.

5 The best I could come up with Dakota Holdings
6 is this one. The others run there and you can look at
7 them if you're having a hard time sleeping.

8 Q. When you say the best for Dakota Holdings, you
9 mean the ---

10 A. This generates the highest possible return to
11 Dakota Holdings. That's how I dealt with the debt
12 service. Now, of course, at the end of the eight year
13 period there would have still been debt and that's on the
14 last page 14.35 million dollars and that would have to be
15 paid back to Dakota Holdings whenever the entity was sold
16 after eight years. But then you have to deal with
17 preferred stock because the company -- Dakota Holdings was
18 not going to be just loaning Warpath funds, it was going
19 to be making investments in preferred stock and I assume
20 that immediately preferred stock dividends at 11 percent
21 annually would be due.

22 Their proposal says they're willing to defer
23 it for a couple of years, but like Dr. Woodside said it's
24 not just forgiven, it means it's cumulative and I did
25 that. And, in fact, they would not have been able to make

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1 any preferred stock dividends to Dakota Holdings until the
2 24th months. It almost seems like I made it up, but it
3 didn't, it happens to be two years out and they were
4 willing to defer from one to three years. What I did was
5 to determine the amount of preferred stock dividends they
6 could pay and if you track through the chart, you'll see
7 that the preferred stock dividends after month 24 start
8 increasing significantly until you get up to month 37. At
9 that time they level off because at that time they would
10 have caught up with their obligation with regard to
11 preferred stock.

12 Finally and you'll have to get all the way to
13 month 48 there would be some cash left over after making
14 their debt service obligation at least with the interest
15 payment and the preferred stock dividend obligation there
16 would be some stock leftover and Dakota Holdings get 60
17 percent of that based on their proposal and that's what
18 their third problem is and it starts in month 48.

19 So what I have for 96 months are cash
20 payments by Dakota Holdings and cash receipts back to
21 Dakota Holdings. And then upon the sale of the entity
22 after 96 months or eight years, and I used eight years
23 because that's what Dr. Woodside used in his first
24 evaluation, I replicated totally the selling price which I
25 computing. I looked at trailing 12 months and then I

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1 looked at operating income, used a cap rate of 11 percent,
2 pulled out selling costs, assumed that the loan within the
3 loan balance had to be repaid to Dakota Holdings, then
4 they would split. They'd get 50 percent of the remaining
5 equity.

6 That is a long winded explanation but here's
7 what it amounts to. The discount rate, and although this
8 is at the top of this chart, it really is a computed
9 internal rate of return. Dakota Holdings based on the
10 cash that it was going to be investing and they're in red
11 on this chart, and the cash that it would receive and
12 they're the columns in green in this chart, the net cash
13 is the column over here that shows the net cash either out
14 or in and as you see through about month 15 or 16, they
15 have no money coming in when they finally start getting a
16 little income in near the bottom of that first page
17 including their proceeds from the sale of that company
18 based on the projections that are available based on their
19 proposal, they had an 11.01 percent return on their
20 investment. That is computed by simply -- what it amounts
21 to is the total present values of money out, the total
22 present values of money in at zero, but that is a way of
23 computing internal rate of return.

24 What this says to me is if Dakota Holdings
25 reviewed those projections, it decided it could take an

Ballard vs. Warpath, et al

1 11.01 percent return on his money at best. Some of these
2 returns are a little bit lower than that, but best case it
3 looks to me like it was going to get 11.01 percent on its
4 money because at that point its cashed out. The project
5 is done, they're in, they're out, and that's what makes me
6 wonder, you know, about the 22 percent discount rate.

7 Really they're three -- I don't know which is
8 the right explanation but I can tell there are three
9 possible reasons for it because its clear that unless
10 Dakota Holdings just drained up this amount of investment,
11 this is about the best return they could expect. Either
12 they expected the project to do a lot better than this and
13 that's one possible explanation and that doesn't really
14 follow through until the end because the interest payment
15 and the preferred stock dividend payments are pretty much
16 defined so it doesn't really follow through until the end.

17 So only if they believe that net operating
18 income after year eight or in a different scenario year
19 five would be much higher than this projected value of 3.3
20 eights of six million dollars, there are stuck with that
21 11 percent. One explanation is they think it would be
22 better than that.

23 Another explanation would be, which I don't
24 think really washes, is they're willing to take an 11
25 percent return on their capital but I don't think they

Ballard vs. Warpath, et al

1 would. I don't know them but I would be surprised if they
2 would. The third explanation is leverage. That is Dakota
3 Holdings itself as a buyer or investor in this company,
4 Dakota Holdings itself was leveraging its acquisition so
5 that it could get a much higher return on its capital by
6 itself borrowing the money that it reinvested in this
7 company.

8 In fact, if it leveraged 75 percent of it at
9 the mortgage interest rates identified in Dr. Woodside's
10 report, it would get a little bit over 21 percent return
11 on its capital. I can't tell you that's what they did. I
12 know this is on only one prospective buyer but it's the
13 only information I had and it suggested that, to me, a
14 buyer can take nominally a much lower return because they
15 are in fact borrowing the money themselves or a
16 significant portion of the money and that makes it no
17 different than anything else that I sell.

18 If I'm selling real estate today and if
19 somebody is willing to pay me nine or ten times the income
20 that it produces, that's what its value is to me although
21 they are going to leverage it. They are going to borrow
22 the money.

23 Then the last thing I did I took, again, I
24 took Dr. Woodside's and this skips all the way over -- you
25 told me to go fast ---

Ballard vs. Warpath, et al

1 Q. Yeah, and just for the record we're skipping over
2 Tab 3, 4 and 5. Those are just different scenarios that
3 you ran as to how the money would be paid back and over
4 what period of time; is that right?

5 A. Yes.

6 THE COURT: Less beneficial to Dakota
7 Holdings?

8 THE WITNESS: Yes.

9 BY MR. LIGHTSEY:

10 Q. Let's go to Tab 6.

11 A. Tab 6 is a replication of Dr. Woodside's
12 computation actually. It's not just a PDF. I went
13 through and did the arithmetic and stuff and came up with
14 a dollar or two of his computation. This is based on 22
15 percent return on equity. If, in fact, you assume that
16 the 11.01 percent is the discount rate to be used, if you
17 leave everything else the same, selling at the end of the
18 deal is still based on residual cash flow, still based on
19 trailing 12 months, net operating income, still using a
20 cap of 11 percent that Mr. Woodside used, the only thing
21 that changes and those are the things that are highlighted
22 in sort of the reddish color there, the things that are
23 changed are the present value factors based on a discount
24 rate of 11.01 percent instead of 22 percent. That would
25 change a 50 percent value too.

Ballard vs. Warpath, et al

1 In his first analysis 20 percent value, one
2 million, eight hundred and fifty-four thousand, 50 percent
3 value, four million, six hundred and thirty-four thousand
4 -- most of these are Dr. Woodside's -- I'm sorry these are
5 not Dr. Woodside's. These are my computations using his
6 methodology just with different discount rate.

7 This first computation based on the project
8 is just getting started. This is the second computation
9 based the project having been going for about
10 two-and-a-half years and the differences are in present
11 values that you can see down at the bottom -- middle of
12 the chart. You can compare those to his and I think there
13 is a way of doing it if you put his 22 percent and ---

14 Q. I don't have a blow up.

15 A. Well, it's in your packet.

16 Q. It's the first two pages of Tab 6 and these are
17 the last two pages of Tab 6. These use a discount rate of
18 11.01 percent instead of 22 percent and one discounts it
19 over an eight year period and the other discounts it over
20 the five year period and down at the bottom you've got a
21 value for 20 percent ownership and you've got a value of
22 50 percent ownership. Anything else you want to add?

23 A. I think the question is if the 20 percent owner
24 or 50 percent owner whatever it's determined to be, if an
25 ownership share can be sold to someone who will, in fact,

Charles Alford - Cross Examination by Mr.
Howard vs. Warpath, et al

1 leverage their purchase and it appears to me that's what
2 Dakota Holdings must have been doing, then his shares
3 would be worth more than a 20/10 percent on equity would
4 require. It's still yet a higher return on equity because
5 they're still leveraging. If the proof is that Dakota
6 Holdings and its own deal using its terms, specifically
7 its terms and the best interpretation of its terms, if its
8 willing to purchase for 11.01 percent return, then why
9 would some hypothetical buyer demand 22 percent return.
10 We've got a real buyer here and this is not fair market
11 value here where you're bound by a hypothetical buyer and
12 selling. This is fair value where you can look at real
13 prospective buyers.

14 MR. LIGHTSEY: Thank you, Dr. Alford.

15 CROSS-EXAMINATION

16 BY MR. HOWARD:

17 Q. Good afternoon, Doctor.

18 A. Hi, Mr. Howard.

19 Q. Tell me again when you were hired?

20 A. In 2013. I'm not sure exactly when but it was
21 after Dr. Woodside's initial report.

22 Q. Sometime in April?

23 A. Probably so, yes.

24 Q. I was provided these documents on July 18 of last
25 month. When did you generate these? There's no dates.

Ballard vs. Warpath, et al.

1 A. Probably within a few days of you getting them.

2 Q. Do you know when you were disclosed to me?

3 A. No, sir.

4 Q. How much are you getting paid?

5 A. \$320 an hour.

6 Q. And that's only by Mr. Ballard, correct?

7 A. That's what I'm planning on.

8 Q. Have you spoken with Dakota Holdings?

9 A. No. I suggested to Mr. Lightsey that he get
10 whatever information he can get from them.

11 Q. Have they funded this deal? Do you know?

12 A. No. In fact, one of their conditions is that you
13 have to clear up the issue of this 20 percent owner before
14 we're willing to do it so obviously they hadn't yet.

15 Q. Do you have any idea the state of their due
16 diligence at this point?

17 A. No.

18 Q. And so when you're looking at this document and
19 what I mean by that it's marked as 4d in the record, the
20 numbers you're generating, these are your interpretations
21 of their document, correct?

22 A. My interpretation of that document and the
23 projections used by Dr. Woodside.

24 Q. Okay. And when you talk about what Dakota could
25 be expecting or might be doing, those are just assumptions

Ballard vs. Warpath, et al

1 you're making?

2 A. I would say this I would assume that I have
3 interpreted this document reasonable well. I have not
4 made any assumptions about what they are demanding in
5 terms of a return. I've computed what they're return
6 would be based on what I believe they are.

7 Q. This is sort of above my pay grade, if you will,
8 when you put out these numbers and looking through them
9 and flipping through them all and I have not had a chance
10 to talk to you about this, have I, until today?

11 A. I would be happy to talk to you anytime,
12 Mr. Howard, whenever you want to.

13 Q. I understand, Doctor, but two weeks ahead of this
14 hearing is a little tight for me, but the assumption about
15 leverage, that's an assumption?

16 A. No, what I said was there are three explanations.
17 Either Dakota Holdings believes it's going to do better
18 than a residual 12 month cash flow of 3.3 million dollars
19 or they're willing to take an 11.01 percent return on
20 their capital or they're leveraging.

21 Q. Okay. And you indicated before -- what we're
22 here about today is a 20 percent 20,000 shares that
23 Mr. Ballard has, correct?

24 A. I've got no dog in the fight about that whether
25 it's 20 or 50 percent. It's a proportionate ---

Ballard vs. Warpath, et al

1 Q. Assuming Mr. Ballard is putting in money into
2 Warpath and that's what we're doing, right, we're valuing
3 what is his percentage today that if he put it in to
4 Warpath and it goes up eight years, the present value of
5 what that would be eight years from now, if he was to put
6 in 20 percent, 20,000 shares.

7 A. That doesn't matter. If it matters, I'm wrong.
8 It seems to me what we're trying to do is figure out what
9 somebody would pay as a fair value for a 20 percent or a
10 50 percent or some percentage ownership in this entity.
11 That's what you're trying to figure out and we know what
12 kind of return one prospective investor expects based on
13 this. That's all I know.

14 Q. This prospective investor is taking 100 percent
15 of the stock as collateral, correct?

16 A. No, taking 50 percent equity, not 100 percent.
17 Dakota Holdings would not be buying the whole thing.
18 Dakota Holdings would end up with a 50 percent equity
19 interest but because you're dealing fair value and not
20 fair market value, you're still taking about proportionate
21 ownership. You're not talking about any sort of discount
22 because it's a controlling interest or 50 percent or 20
23 percent interest.

24 Q. I understand that but the risk factor you're
25 going to take in putting the money in and certainly your

Ballard vs. Warpath, et al

1 risk is going to be lower when you're taking collateral
2 stock; is that correct?

3 A. Not necessarily. I think your risk is lower if
4 you simply loan them the money. As soon as you start
5 making an equity investment, you start sharing in the
6 risk. Now, their risk, as I said, they were trying to
7 hedge their risk and they did by identifying it as
8 preferred stock and by proposing a 20 percent division --
9 a 60/40 division on equity until it was sold. So you know
10 they're trying to hedge and obviously they were taking a
11 risk. No doubt about that.

12 Q. And this money is coming back to them ahead of
13 everybody else, correct?

14 A. No, the interest comes back to them before
15 anybody else and preferred dividends, then 60 percent of
16 any remaining cash flow, but that's -- it goes without
17 saying that's how they were hedging their risk and it
18 would come back to them.

19 Q. Have you done any independent research on marinas
20 and their expectation of returns on capital?

21 A. Only a little bit of reading and what I've read
22 confirmed what Dr. Woodside said. He and I probably
23 looked at some of the same things. A marina owner wants
24 pretty good return on capital, but an investor would want
25 a good return on capital but that doesn't mean that you

Ballard vs. Warpath, et al

1 can't leverage.

2 Q. But you have no idea what the intentions of
3 Dakota Holdings were in rendering this, do you?

4 A. No intention but I can tell you this either they
5 were leveraging or they were happy with the 11 percent
6 return or they expect the performance of this company
7 would be better than what these projections are. It's got
8 to be one of those three things.

9 Q. When you looked at Dr. Woodside's numbers and you
10 ran your projections according to his numbers, you were
11 using all his numbers for the 11 percent, correct?

12 A. That's what it amounts to because I don't have
13 any other basis for doing projections and computations for
14 present value are mathematical exercises. I check it and
15 they were right and I would be shocked if his computations
16 had not been right. It's coming down to whether 22
17 percent of that first eight years or first six years,
18 whether that's right or not in light of the Dakota
19 Holdings offering. I think that's what it amounts to.

20 Q. Have you made any effort to perform a building
21 method analysis on this, on the rate return?

22 A. No, but if I did that's return equity and I'd do
23 exactly the same thing. I'd use treasuries and what
24 Dr. Woodside used for an equity adjustment and for the
25 small company adjustment and company specific risk

Ballard vs. Warpath, et al

1 adjustment and 22 percent is fine for returnable equity,
2 but the point is someone can generate a return on equity
3 much higher than the nominal return on the project because
4 they're using some borrowed funds. And the proof of this
5 may be in this. Either than or they're willing to take an
6 11 percent return or they think the project is going to
7 perform better than what management's projection to
8 Dr. Woodside was.

9 Q. Did you do any particular research on the cap
10 rate or did you assume Dr. Woodside's cap rate?

11 A. It doesn't matter. What I did was to determine
12 what -- and the proof in the pudding -- is what Dakota
13 Holdings expected return was and the best case scenario to
14 them is this.

15 Q. You don't know what their expectation is, though.
16 You have no idea what their expectation is.

17 A. That's not a question, though. What I said to
18 you is that's the best case. If Warpath elected with any
19 additional cash flow that it might have after making
20 interest payments and after making preferred dividend
21 payments, if Warpath elected to go ahead and start making
22 the payments down, their return -- Dakota Holdings would
23 be a little bit less. I did it based on five years and on
24 five years which they said the term was. At the end of
25 five years the trailing 12 months and that operating

Ballard vs. Warpath, et al

1 income was much lower so the selling price would be much
2 lower. Like Dr. Woodside said if they had to sell it
3 after five years, the amount at which they could sell it
4 would be even less if it's based on capitalizing 11
5 percent, trailing 12 months and that operating income. So
6 I'm not saying this is what they expected, but as far as I
7 can tell this is the best they could expect.

8 Q. Are you aware if Dakota Holdings is willing to
9 buy this or not?

10 A. No, I don't think they were because they had this
11 reservation about this 20 percent ownership.

12 Q. I understand but were you aware of whether they
13 were willing to buy 100 percent of this investment?

14 A. No, I'm not. The only thing that I'm aware of is
15 what's on this document that you've already identified.

16 Q. Were you aware that they were approached about
17 purchasing this investment?

18 A. Not until this second when you mentioned it.

19 Q. And you're unaware that they were unwilling to
20 buy this investment?

21 A. No.

22 Q. You're not aware they were unwilling to buy
23 Mr. Ballard's 20 percent?

24 A. No.

25 Q. You weren't aware of that?

Ballard vs. Warpath, et al

1 A. I'm presuming that is true because this says you
2 deal with the 20 percent owner then we'll talk about this
3 investment. I think that suggests that. They didn't want
4 his 20 percent, they wanted 50 percent after clearing up
5 this issue that y'all are here arguing about today.

6 Q. But they were unwilling to buy up his 20 percent
7 to clear up this issue, were you aware of that?

8 A. That's what this looks like.

9 Q. They were not willing to buy it, correct?

10 A. That's what this suggest to me, yes.

11 Q. When you used Dr. Woodside's numbers, you were
12 using Rick Thomases numbers, were you not?

13 A. Based on his testimony earlier, yes.

14 Q. The same numbers they are trying to discredit
15 today also?

16 A. I guess. I'm not trying to discredit them. I'm
17 simply saying if that was the projection, here's the
18 result. That's all I'm saying.

19 MR. HOWARD: Thank you, Your Honor.

20 THE COURT: What's the value of the company?

21 THE WITNESS: Based on assuming the eight
22 year, Dr. Woodside's first evaluation, I think the value
23 of the company is paved at nine million, two-hundred and
24 eighty six thousand, one hundred and twenty-six dollars.

25 THE COURT: And that's on eight years.

Charles Alford - Redirect Examination by Mr.
Lightsey Ballard vs. Warpath, et al

1 THE WITNESS: Yes.

2 THE COURT: 11.01 discount.

3 THE WITNESS: Yes.

4 THE COURT: Alright. And that's it.

5 THE WITNESS: That's it. If I had to put a
6 number on it, that would be it.

7 THE COURT: Mr. Lightsey.

8 BY MR. LIGHTSEY:

9 Q. Just to complete that, if you used the five year
10 time period, you would get a company value of five
11 million, thirty-four thousand, nine sixty-nine; is that
12 right?

13 A. Yes, using that six year period, essentially
14 about five-and-a-half years, one million, thirty-four
15 thousand, nine hundred and sixty-nine.

16 MR. LIGHTSEY: Thank you. A couple of quick
17 points. There's been a suggestion that perhaps the terms
18 of Dakota Holdings offers changed, I did recently ask Josh
19 to confirm if there was no further offer from Dakota
20 Holdings and he relayed to me that there was no further
21 offer, that the document we had was the final document or
22 most recent document. And then as far as the due
23 diligence or what we know what Dakota Holdings was really
24 thinking, I didn't ask Dakota Holdings for their
25 documents. We didn't have time to subpoena them, they're

Ballard vs. Warpath, et al

1 out of state and I was told that the defendants said we'll
2 take care of that so we don't need to send them anything.
3 So I was unable to get any documents from Dakota Holdings.

4 And last, Your Honor, as we mentioned in our
5 pretrial memorandum that was submitted back in May in
6 light of the testimony and representations of defense
7 counsel and testimony of the defendants, we do ask for a
8 fairly prompt time period for the defendants to buy out
9 Mr. Ballard for whatever number you determine to be fair
10 value. We would ask in light of the testimony today that
11 the Court include in the order that if the defendants fail
12 to do so that they're remaining shares of stock would be
13 surrendered for cancellation by the company.

14 MR. HOWARD: Do you want me to summarize?

15 THE COURT: Let me do this. I know this will
16 surprise everyone in the courtroom but I'm going to take
17 this under advisement. I need to digest this. Do you all
18 want to submit some post-trial memorandum and I'll be
19 happy to give y'all that opportunity.

20 MR. HOWARD: At this point, if we're not
21 going to summarize, I'll probably need to do that and I
22 think that may be preferable because there are some
23 aspects that I do want Your Honor to consider in light of
24 their issues and in light of the Court's obligations.

25 THE COURT: I'd like to say this, I need to

Ballard vs. Warpath, et al

1 put a limit on it and if Ms. Lightsey if you want to
2 submit one. I've got your pretrial and I don't know what
3 you had with that.

4 MR. LIGHTSEY: If you give me that
5 opportunity, thank you.

6 THE COURT: Thank you very much.

7 ---END OF TRANSCRIPT RECORD---

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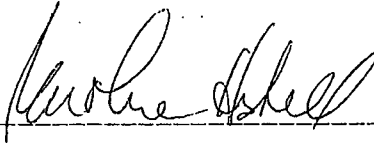
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Ballard vs. Warpath, et al

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I, the undersigned Caroline Hiskell, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Common Pleas Court of Greenville County, South Carolina on the 26th day of August, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Caroline Hiskell, Thirteen Circuit Court Reporter

State of South Carolina.,)
)
)
)
County of Greenville.,)

In the Common Pleas
Court of Greenville

Case No.: 2008-CP-46-05739

Andrew P. Ballard.,)
)
Plaintiff.,)
)
-vs-)
)
Tim Roberson, et al.,)
)
Defendants.)

Transcript of Record

Greenville, South Carolina
March 13, 2014

B E F O R E:

The Honorable Edward W. Miller, Judge.

A P P E A R A N C E S:

Mr. Wallace K. Lightsey
Wyche Burgess Freeman & Barham. P.A.
P.O. Box 728
Greenville, South Carolina 29601
864-242-8207
For the Plaintiff
wlightsey@wyche.com
For the Plaintiff

ORIGINAL

Mr. Joshua Howard
Haynsworth Sinkler Boyd, P.A.
P.O. 2048
Greenville, South Carolina 29602
864-240-3200
jhoward@thehowardassociation.com
For the Defendaht

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.:

No witnesses were called.

I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF ANDREW P. BALLARD
2 V. TIM ROBINSON, ET AL, THURSDAY, MARCH 13, 2014 AT 02:35
3 P.M..)

4 THE COURT: Okay, what do you all want to tell me?

5 MR. LIGHTSEY: I got a lot, Your Honor, but --

6 THE COURT: Well isn't it Josh's motion?

7 MR. LIGHTSEY: It's his motion yes, Your Honor.

8 THE COURT: All right. Well let me have it.

9 MR. HOWARD: All right, Your Honor.

10 Good to see you by the way. It's been a while.

11 THE COURT: Thank you very much. You're looking very
12 healthy.

13 MR. HOWARD: Trying to - Haven't been to the Y lately
14 but I still been working out.

15 THE COURT: Wallace has been at the Y.

16 MR. HOWARD: I know Wallace has been to the Y.

17 THE COURT: All right.

18 MR. HOWARD: I just didn't make it.

19 But, Your Honor, we're here on Defendant's Motion to
20 Stay Execution pursuant to South Carolina Code annotated
21 18-9-130.

22 Your Honor, this - as you might be aware this matter
23 is under appeal at this point.

24 THE COURT: Uh-huh.

25 MR. HOWARD: As it concerns any considerations that

1 the Court would make obviously being subject to appeal at
2 this point is a consideration. The appeal will ask for the
3 order to be vacated and returned. This is all contained in
4 prior briefing, a Motion for Reconsideration that was made.
5 A lot of it's all contained within there that's gonna be
6 the subject of. I don't think it goes without saying by
7 seeking relief under the involuntary dissolution statutes
8 plaintiff was asking the Court to step in and assume a role
9 in corporate structure and govern it and the Court did
10 that.

11 In that role the Court cannot solely consider the
12 interest of just the plaintiff. This is not a case of
13 damages. Plaintiff voluntarily dismissed those legal
14 claims with prejudice and elected equitable relief.

15 As it stands right now the Court has ordered - issued
16 an order that was essentially doomed to fail from the
17 beginning and for all practical purposes from there aspects
18 --

19 THE COURT: What, Josh?

20 MR. HOWARD: This is what was argued at the trial,
21 Your Honor. I ask for installments. I ask for
22 installments.

23 THE COURT: Okay. All right.

24 MR. HOWARD: And that's what I mean.

25 THE COURT: Okay.

1 MR. HOWARD: And that's - Let me get to it.

2 THE COURT: All right. Go ahead.

3 MR. HOWARD: In as much as this is a consideration of
4 the Plaintiff in issuing it's order the Court should
5 structure it also in consideration of the corporation
6 itself. You got to keep in mind the corporation, it's
7 community, it's creditors, it's - the government financial
8 partners, Duke Energy, all those that play into this
9 corporation and are sitting on the side lines while nothing
10 can happen at this point.

11 This corporation as it sits right now couldn't be
12 sold, it can't be financed, there's basically - when the
13 court considered it, the entire value the court imposed
14 assumed a fully developed and operating Warpath. Yet in
15 its current state it can't reach that as it stands right
16 now.

17 THE COURT: Because - because it's on appeal?

18 MR. HOWARD: No. Because - No not because of an
19 appeal.

20 THE COURT: All right.

21 MR. HOWARD: Because the - Basically at this point
22 because the shares are in limbo. That's where we stand.

23 THE COURT: Okay.

24 MR. HOWARD: All this is in limbo. Like I said, it
25 can't be funded, it can't be sold, over all most of the

1 appeal is as a deficient structure to the order. The order
2 never had a chance to succeed and now Warpath, Community
3 Duke, local government all in limbo.

4 One of the issues, lack of installment purchase on
5 this. We ask for it, it was majority favored, we got -
6 there are other statutes in this state, it's very
7 specifically outlined in the - If you look at just from a
8 persuasive standpoint if you look at this closed
9 corporation statute it specifically states in the close
10 corporation statute that installments should be considered.
11 The majority - And the majority of the Courts out there
12 that consider this imposing installment. You're looking at
13 imposition of hardship and balancing of approach. And in
14 this case you have a non operational entity where you don't
15 have any chance of the corporation itself assisting at this
16 point and getting Mr. Ballard paid off.

17 The - Like I said lack of consideration the interest
18 of Warpath is the going concern. These are all things that
19 are gonna be presented. It's all the issues that are going
20 up on appeal.

21 As I - From a present standpoint Mr. Ballard still
22 retains his shares. No present harm to Mr. Ballard at this
23 point. He has them, he still retains them and possesses
24 them. From a surety standpoint to the extent the Court
25 seeks to grant a stay of execution and seeks surety for

1 that the defendant's have pled - have stated in their
2 motion that we don't think its necessary. The reason is is
3 because Mr. Ballard retains his shares but to the extent
4 surety is needed the defendants will put up their shares as
5 surety to Mr. Ballard. And that's all I have, Your Honor.

6 THE COURT: Okay.

7 MR. LIGHTSEY: Your Honor, I have a bit more but I
8 will try not to go on too long. I sat here listening to
9 Mr. Howard and wondering what does this have to do with a
10 motion for a stay. These are arguments that might be made
11 against the remedy order that's already filed that is on
12 appeal. We had a money judgment and we're entitled to
13 execute on that judgment. Unless the stay is granted the
14 appeal itself does not stay execution.

15 As I prepared for this motion I thought about where
16 we've been just over the last year or so. I kept wondering
17 why are we here? Why are they asking for a stay? Why
18 would they care whether or not execution is stayed? Last
19 August you recall they came into court and said we concede
20 that a million dollars is fair price, we can't pay that.
21 They claim that they were impoverished and couldn't pay
22 even what they conceded was a fair price.

23 What we've learned since then is that in addition to
24 our judgment for about three and a half million dollars,
25 all the defendants including Warpath - this is something we

1 did not know about last August - had a judgment entered
2 against them in 2012 by Palmetto Bank which foreclosed on
3 forty acres of real estate owned by Warpath and now has a
4 deficiency judgment against all the defendants including
5 Warpath for a Hundred and Fifty Thousand Dollars.

6 The Defendant Tim Roberson has a judgment against him
7 in Charleston County of 1.3 Million Dollars by Wells Fargo.
8 Mr. Thoennes, Senior, had a judgment entered against him
9 just this fall in Oconee County for 2.9 million dollars by
10 Kieowee Property Owner's Association with another phase of
11 that trial yet to come and possible equal amount of
12 damages.

13 Mr. Thoennes, Senior, also had a judgment entered
14 against him in January of 2012 by Grand South Bank for Two
15 Hundred and Twenty-six Thousand Dollars. Mr. Thoennes, III
16 has been through bankruptcy because of all the claims
17 against him. And yet they're asking the Court - and I read
18 from their motion - they ask the court to stay and they say
19 no bond is necessary to secure the payment of this judgment
20 should this matter be affirmed on appeal.

21 I cannot understand how a bond could not be necessary.
22 Where are the assets to secure this judgment? They say
23 that they will place the shares of the stock. This is a
24 company that now has a Hundred and Fifty Thousand Dollar
25 deficiency judgment against it; it has been put on notice

1 by Duke Power that if they don't begin construction that
2 Duke is gonna revoke the lease so any security that might
3 come from these shares is illusory at best at this time.

4 If they have assets to secure this judgment let's see
5 it. If they don't have the assets there is no reason that
6 the execution should be stayed at least without a bond.
7 There is a reason the defendant's don't want us to proceed
8 with execution even though they say they don't have
9 anything to pay us. What we have found we have issued the
10 third party subpoena's we are starting to get those
11 documents back and we're really just at the tip of the
12 iceberg now but we have gotten documents back from a couple
13 of banks.

14 What we have found is that the defendants have an
15 extensive network of companies, LLC's and partnerships,
16 over thirty that we have found at this time. They are
17 moving hundreds of thousand's of dollars around among these
18 companies with frequent checks being paid out to
19 themselves, or payable to cash in amounts of five thousand,
20 eight thousand, ten thousand dollars.

21 And most tellingly, Your Honor, just in January of
22 this year six or seven weeks ago the defendant's
23 construction company paid out twenty - excuse me - twenty
24 thousand dollars to the wife of Mr. Thoennes all on one day
25 in three different checks but consecutive numbers. Twenty

1 Thousand Dollars payable after our judgment became final,
2 after they moved for stay of execution, after we moved for
3 supplemental proceedings, twenty thousand Dollars goes out
4 to the wife of one of the defendants from their company.

5 And this speaks, volumes Your Honor. If this is not a
6 transfer to defraud creditors I will surrender my law
7 license. They have been paying themselves handsome, they
8 own valuable real estate that is secreted under layers and
9 layers of companies. They are driving around in BMW's and
10 Cadillacs and living in nice expensive homes. They have
11 multiple pleasure boats and all the while they are cheating
12 their creditors and tax collectors. And from what we can
13 see they have been doing this for years.

14 Their mind set is as long as we can keep dragging this
15 out and make collection as protracted and expensive and as
16 difficult as possible the other side will eventually give
17 up and we will get away with it and that is what this is
18 all about here today.

19 This is a mockery of our civil system, it is a waste
20 of the court's resources, these are the same people you
21 will recall alleged counter claims against Mr. Ballard;
22 accused him of fraud demanded a trial by jury and then got
23 into the trial and after being examined - cross examined by
24 my former partner Frank Hallman drive those claims and
25 dismissed the jury. These are the same people who said

1 after they took their initial appeal we said let's go ahead
2 with the evaluation hearing so we can take it all up at
3 once and they said no not gonna do the evaluation hearing
4 until we have this appeal.

5 So they appealed it once, they lost, they came back we
6 spent a year last year getting ready for and doing an
7 evaluation hearing and then after all that they come into
8 court and say well we can't pay anyway.

9 It's a mockery, Your Honor. I brought up a year ago
10 the idea of a bond. I brought it up with Mr. Howard
11 initially. We had an in chambers status conference with
12 you in which you were kind enough to grant us in February
13 of last year. At that time I said the defendant's ought to
14 post a bond so we don't go through all this. We had to
15 spend a lot of money to Barry Woodside. Let's don't go
16 through all this if it's gonna turn out that they can't pay
17 it anyway. So let them you know put up a bond.

18 I was reassured repeatedly by Mr. Howard in the
19 chambers and the multiple emails that I still have that no
20 bond is necessary because the Defendant's had the resources
21 to pay whatever this court determined to be a fair price
22 for that stock. So after going through that and as late as
23 May of last year saying no bond is necessary they intend to
24 buy them out at a fair price whatever the Court finds.
25 Then they come in in August and say we don't have any money

1 we can't pay this off unless you give us installment
2 payments. And then now they come in and say no bond is
3 necessary for a stay of execution. I submit there is no
4 way we can give that any credence.

5 In these circumstances, Your Honor, the Court should
6 deny a stay altogether or at the very least condition it on
7 posting a supercedes bond. And we submit it should be in
8 the full amount of the judgment. Under Rule 26(d) of the
9 Rules of Civil Procedure as well as 241 of the Appellate
10 Court rules this court has the discretion to grant or deny
11 the stay and if it grants it it can condition it on
12 whatever terms it sees fit including the posting of a bond.

13 We submit that they pay the full amount of the
14 judgment that is the norm in Federal Court, in South
15 Carolina, and in most other states. And in fact in Federal
16 Court here there is a little rule that requires a bond to
17 stay execution on appeal of a Hundred and Twenty-five
18 percent to One Hundred and Fifty percent of the amount of
19 the judgment whatever the court decides in its discretion.

20 As our district court said in the Southeast Book
21 Seller's case that we cited in our brief, a plaintiff who
22 has won in the trial court should not be put to the
23 expenses of defending in judgment on appeal unless the
24 defendant takes reasonable steps to assure that the
25 judgement will be paid if affirmed. And here the

1 defendants have not provided any such assurance. To the
2 contrary they have said they can't pay. They do have
3 substantial other judgments against them, a total
4 collectively of over Eight Million Dollars now.

5 So I would submit there is no reason in the world to
6 give them a free ride here. If they want a stay they
7 should put up a bond and it should be for the full amount
8 of the judgment. And if they don't want me, and my
9 partners here, if they don't want us poking around in their
10 various financial dealings then they can put up the bond in
11 the full amount and we would be happy with the stay of
12 execution with the full bond there to satisfy our judgment
13 when we come back from the appeal.

14 Your Honor, you know me, you know it's not my style to
15 hurdle accusations at people or waive arms around and bluff
16 and bluster but we have a very clear picture that we're
17 seeing in these defendants and they have been doing this
18 for years. Not just with Mr. Ballard but against other
19 people as well including the tax collectors. They fight
20 collection tooth and nail. They claim they don't have any
21 assets while they live in expensive homes and enjoy boats
22 and expensive cars and pay themselves handsomely out of
23 cash being generated from the various businesses.

24 That's why they want the stay of execution. That's
25 why they don't want us looking into that and that's exactly

1 why the Court should deny this motion and either let us
2 proceed. And we do urge the Court regardless of your
3 ruling to issue the Rule to Show Cause today so we could at
4 least we could freeze the assets that we know of. We've
5 got I think clear proof of a Twenty Thousand transfer to
6 defraud creditors that happened just six weeks ago so we
7 urge you to go ahead and issue the Rule to Show Cause.
8 I've got - I previously submitted a copy but I have one
9 here for your consideration.

10 And again I would just stress that these are - what
11 we're seeing here are really the first fruits of our
12 investigation. We've just gotten records back from a
13 couple of banks; there are a number of others we're still
14 waiting on that we're trying to work with in getting their
15 documents. The defendants obviously are resisting
16 discovery themselves. We've gotten some stuff from them
17 but mostly a lot of obfuscation so we think we're just at
18 the tip of the iceberg and we certainly think at a minimum
19 their assets should be frozen I think except for we concede
20 that cash to be ordinary living expenses is appropriate.

21 But otherwise the Court should freeze their assets
22 except for in time for them to appear in court and be
23 required to answer questions about some of these things.
24 And that if any stay is gonna be issued that they be
25 required to post a bond for the full amount of the

1 judgment.. Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. HOWARD: There are a lot of facts there that were
4 stated that I have not had a chance to investigate and we
5 were aware of until I walked in here today.

6 The - I have not had a chance to ask my clients about
7 any of this so I don't know how I can respond factually to
8 any of that. I don't have anything to respond at this
9 point. As far as legally --

10 THE COURT: Well which - I mean there were a lot of
11 facts. Which ones do you don't know about?

12 MR. HOWARD: A lot of the information that is being
13 provided here about - I don't know. I don't know what
14 these checks were for. I have no idea. As I understand
15 and I'm not even sure who is full - I'm not even sure what
16 the ownership structure or member construction development
17 is. I know it's associated with I think Rick the III who
18 is the - who is discharged from bankruptcy at this point.

19 THE COURT: - Well I think - You mean - What now?
20 This corporation is in bankruptcy?

21 MR. HOWARD: No, no, no. Rick the III personally. I
22 don't think the corporation ---

23 THE COURT: Oh.

24 MR. HOWARD: --- itself is cause I don't know the
25 status of this. They just ask for documents related to

1 Rembery and I don't know what the status of that is at this
2 point.

3 THE COURT: Well I suspect they had some idea about
4 the connection or they wouldn't have subpoenaed the
5 records.

6 MR. LIGHTSEY: I don't know about the ownership, Your
7 Honor. I know that both Thoennes' are directors and
8 managers of the company cause that's on their web site.
9 We've subpoenaed their records they have not responded to
10 our subpoena and we had - we're preparing to move for
11 contempt. I realize it was a defect in the date of
12 production required in the subpoena so we just reserved it
13 again last week and they have another week or so to respond
14 to that so we have requested that.

15 I know it's associated with the Thoennes'. I know
16 from the bank records of Rembery that we have there are
17 multiple checks going frequently like every couple of weeks
18 of Five, Eight, Ten Thousand Dollars to Mr. Thoennes,
19 Senior, as well as Ricky Thoennes the III, for cash. And
20 then we also found that these checks of Twenty Thousand
21 Dollars total going to Mr. Thoennes' wife just in January
22 after we filed out motion for supplemental.

23 THE COURT: Okay.

24 MR. HOWARD: As to a willingness to buy Mr. Ballard
25 out, I don't think that's ever changed. That's why I made

1 a statement about installment payments. That's what
2 they've been looking --

3 THE COURT: I'm sure he'd sell right now for the
4 judgment amount plus the interest that's accrued.

5 MR. HOWARD: I'm certain he would. I'm certain he
6 would. And we didn't give up the interest, Your Honor.

7 THE COURT: Okay.

8 MR. HOWARD: The - As far as - The stay of execution
9 is governed by 18-9-130. He mentioned Federal statute 18-
10 9-130 as a cap of a Million Dollars on it and from the way
11 I read it the amount of bond owned surety may not exceed
12 the amount of the judgment or One Million Dollars which
13 ever is less for all these other individuals.

14 THE COURT: Yeah. Which is sort of works against you
15 in this case.

16 MR. HOWARD: How so?

17 THE COURT: Well I would not be inclined to stop - I
18 mean, Josh, I'm not gonna grant the stay of execution. I
19 mean when did we first start trying this case? When was
20 that with Frank?

21 MR. LIGHTSEY: The trial was in 2010. The case was
22 filed in 2008.

23 THE COURT: I mean I really tried to the best of my
24 ability to encourage everybody to try and resolve it cause
25 I thought it was - I mean everybody knew it was hard times

1 but the upside potential in the project was enormous and I
2 thought well I'd try to encourage everybody to get together
3 and resolve it and that just apparently hasn't happened.

4 So I'm gonna deny your motion to stay execution. Have
5 you reviewed the Rule to Show Cause?

6 MR. HOWARD: Let me see another copy of it, Your
7 Honor, if you've got one.

8 THE COURT: Here.

9 MR. HOWARD: Thank you.

10 MR. LIGHTSEY: Your Honor, one thing I would like to
11 point out. We have in this - The rule - The point though,
12 the rule does include to show cause why receiver and aide
13 of execution should not be appointed and we do think that
14 would be a very good thing here because there is a lot to
15 take in, a lot of records and a lot of money being moved
16 around.

17 THE COURT: Uh-huh.

18 MR. LIGHTSEY: A receiver and aide of execution would
19 be a good thing.

20 THE COURT: Have you had contact with anybody who you
21 think might be willing to take something like this on?

22 MR. LIGHTSEY: Yes, Your Honor. Mike O'Shea who was
23 with Dixon Hughes he's got his own firm now. He's a
24 forensic accountant. He did the - He was the court
25 appointed examiner for the On Gold matter - of Dixon and

1 has good experience with this kind of thing.

2 THE COURT: Yeah.

3 MR. LIGHTSEY: We can submit all of that to the Court
4 if you're inclined to consider it.

5 THE COURT: Okay.

6 You can keep that, Josh, I got about four copies.

7 MR. HOWARD: Okay. Thank you, Your Honor.

8 THE COURT: But that was not signed yet.

9 I'll tell you what.

10 MR. HOWARD: Your Honor, other than a general
11 disagreement we're proceeding forward.

12 THE COURT: Let me just say this. I would be inclined
13 not to sign this and not to put all your client's through
14 the intrusion that is gonna occur and I will stay execution
15 if they will post a bond in a Hundred and Twenty-five
16 percent of the judgment amount.

17 MR. HOWARD: I'm writing that down, Your Honor.

18 THE COURT: I mean that would get them out of this.

19 Otherwise I don't see any reason not to go forward.
20 And if they're - You know if they're Twenty - Twenty
21 Thousand Dollars in a single day to - I mean you know that
22 can turn out to be nothing but it sure looks a little
23 suspicious.

24 MR. HOWARD: I can't say one way or another at this
25 point, Your Honor.

1 THE COURT: That's quite a shopping spree.

2 MR. HOWARD: In isolation I understand.

3 THE COURT: Right. Right.

4 MR. HOWARD: The only thing I can say to this offer,
5 Your Honor, is I'd have to confer with them.

6 THE COURT: Yeah I'm well aware of that. And here's
7 what - I probably much to their chagrin I'm gonna - I'll
8 give you a few days to talk to them but other wise - I'll
9 tell you, if they're not gonna do it, if the bond is not -
10 it's not a promise to post the bond. They're gonna have to
11 get the bond.

12 MR. HOWARD: I understand.

13 THE COURT: Then I don't sign anything. But if
14 they're not gonna do it, they don't have it done, a week
15 from tomorrow the bond is not posted I'm gonna sign the
16 Rule to Show Cause and I guess right now I'm sort of taking
17 your motion under advisement.

18 MR. HOWARD: Understood, Your Honor.

19 THE COURT: Okay.

20 MR. HOWARD: And just so it's aware that for all
21 similar reasons and to the general disagreement and general
22 opposition to the Rule to Show Cause - I'm just putting
23 that on the record.

24 THE COURT: I know. I know you're right. Josh, you -
25 Nobody - it's nothing personal.

1 MR. HOWARD: I understand.

2 THE COURT: Okay. Well then so this --

3 MR. HOWARD: Next Friday should be fine, Your Honor.

4 THE COURT: Okay.

5 MR. HOWARD: I will inform them this afternoon.

6 THE COURT: And if they - I mean its coming to the -
7 you know they're coming right to the both toes on both feet
8 are hanging over the cliff's edge.

9 MR. HOWARD: Certainly.

10 THE COURT: You know maybe between now and then you
11 all can resolve the whole thing. But then again maybe not.

12 MR. HOWARD: That will be the desire, Your Honor.

13 THE COURT: That would be - yeah, desirable for
14 everybody.

15 MR. HOWARD: Certainly desirable and it would be nice
16 to move on.

17 THE COURT: All right. And I put the burden on Mr.
18 Lightsey to get - to tickle me so that I follow through
19 with my Friday week.

20 MR. HOWARD: If they are unable to do that I will let
21 you know even before, Your Honor.

22 THE COURT: Okay. All right.

23 MR. LIGHTSEY: Thank you, Your Honor.

24 MR. HOWARD: Outside of traveling early next week.
25 I'll be back on Wednesday.

1 THE COURT: Okay. Where are you off to?
2 MR. HOWARD: Beautiful Indiana. . .
3 THE COURT: All right.
4 MR. HOWARD: Thank you, Judge.
5 THE COURT: All right. Good to see you guys.
6 - END OF TRANSCRIPT OF RECORD.-
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State of South Carolina)
County of York)

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE:

) COURT OF COMMON PLEAS
) 2008-CP-23-5739

2008-CP-23-5739

PLAINTIFF)

TRANSCRIPT OF RECORD

DEFENDANTS)

April 23, 2014
Greenville, South Carolina

THE HONORABLE EDWARD W. MILLER, Judge.

WALLACE LIGHTSEY, ESQ.
AMOS A. WORKMAN, ESQ.
BILL WILSON, ESQ.
Attorneys for the Plaintiff

JOSHUA L. HOWARD, ESQ.
JAMES W. FAYSSOUX, ESQ.
Attorneys for the Defendants

APRIL HERRON
Official Court Reporter

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PLAINTIFF EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Documents	25	25
2	Photographs	44	44

1 THE COURT: Okay, we're here on a rule.

2 Mr. Lightsey.

3 MR. LIGHTSEY: Thank you, Your Honor. This is a rule
4 to show cause in connection with supplementary
5 proceedings. If I can approach the podium because I have
6 a few things to hand up.

7 THE COURT: Okay.

8 MR. LIGHTSEY: I'm here today with Amos Workman and
9 Bill Wilson who are my law partners and they will be doing
10 most of the heavy lifting with examinations and
11 everything. But I wanted to mention a few preliminary
12 things and submit a few things for your consideration.
13 One is I do want to know that one of the Defendant's,
14 Ricky Thoennes the third, I mentioned this at our last
15 hearing on the motion to stay execution, Mr. Thoennes the
16 third has been through a bankruptcy proceeding. I was
17 contacted late last week and had some discussions early
18 this week with his bankruptcy counsel.

19 THE COURT: Okay.

20 MR. LIGHTSEY: And also Wally Fayssoux and Mr. Jim
21 Fayssoux who is here with us today.

22 THE COURT: Okay.

23 MR. LIGHTSEY: We have a dispute as to whether the
24 bankruptcy affects our ability to collect this judgment
25 against Mr. Thoennes the third but we have agreed, at

1 least, for the time being to hold in abeyance any further
2 attempts to execute against him until we resolve that
3 either by agreement or by a Court order. So, we want to
4 to proceed with the examination today of Mr. Roberson and
5 Mr. Thoennes Senior and possible Mr. Thoennes the third if
6 there's time for that. But as to Mr. Thoennes the third
7 it would only be to seek information concerning the other
8 two defendants. So, I just want to make clear right now
9 we're holding in abeyance any further attempts to execute
10 the judgment against Mr. Thoennes the third.

11 THE COURT: Okay.

12 MR. LIGHTSEY: Until we resolve that issue. This is
13 a minor matter but in connection with some subpoenas to
14 several entities that Mr. Roberson has an interest in.
15 Their attorney who is Berry Preston from Nelson Mullins,
16 has asked that we have a confidentiality order to provide
17 the production of financial records. Several of those
18 entities. I've given a copy of that to Mr. Howard. I
19 don't think there should be any issue concerning that.
20 That's just to allow us to go ahead and get the financial
21 records from those entities.

22 THE COURT: Okay.

23 MR. LIGHTSEY: So, we appreciate your considering
24 that. Part of the rule to show cause as the Defendant to
25 show cause why a receiver should not be appointed. We do

1 think that that is good idea and would save us from
2 continually having to come back to the court and bring
3 issues back up with the court. So, I have an order
4 appointing receiver for your consideration.

5 THE COURT: All right.

6 MR. LIGHTSEY: And the receiver that -- the person
7 that we're suggesting as one of the receivers is Mr. Mike
8 O'Shea who's with us in court today. And he's available
9 to answer questions on his qualifications. But I had him
10 do an affidavit.

11 THE COURT: All right.

12 MR. LIGHTSEY: And attach a copy of his CV for the
13 Court's consideration.

14 THE COURT: Okay.

15 MR. LIGHTSEY: And then finally, Your Honor,
16 Mr. Roberson has interest in a number of LLC's and under
17 the liability company hat the only way you can execute
18 against a membership in a LLC is to enter a Charging Order
19 against distributions from the LLC. You can't actually
20 take the ownership interest like you would with stock in a
21 regular corporation. So, we prepared a draft Charging
22 Order for your consideration as well.

23 THE COURT: All right.

24 MR. LIGHTSEY: It would be just for the LLC interest.

25 THE COURT: Okay.

6

1 MR. LIGHTSEY: I previously provided copies of these
2 materials to Mr. Howard but I'll give him paper copies
3 again today. I wanted to let you know we have been
4 working hard since we saw you last. Issued a lot of
5 subpoenas. We have gotten a good many records from third
6 parties. There is a lot of complexity to the financial
7 picture here. A lot of different entities, LLC's
8 partnerships and corporations. We do believe there are
9 assets available to satisfy the Court's judgment. And
10 since there's an appeal going on, what we want to do at
11 this point is to simply identify the assets, take
12 possession of them or have the receiver take possession of
13 them if you agree to appoint the receiver. Just so those
14 assets can be held while this is pending. Because we are
15 confident that otherwise these entities we found that do
16 have assets will be stripped.

17 We have also had problems getting information from
18 the Defendants. There is presently pending two motions to
19 compel. There are several motions for contempt relating
20 to the entities that the Defendants control and simply
21 don't respond to the subpoenas. So why we have a lot of
22 information it is incomplete. And at that the end of the
23 proceeding today we would like to hold the record open
24 because we do anticipate getting more information. We
25 still would like to begin today. I think that the

1 examination of the Defendants will give you a good sense
2 of the fact that there are some assets, that is a lot of
3 them complexity. There's a honeycomb of companies, LLC's.
4 But in them there's a lot of stuff is moving around. A
5 lot of cash, lots of real estate and other assets.

6 And for all of these reasons it's why we urge you
7 considering appointing a receiver. We think it would be a
8 wise use of the Court's time and resources so that we're
9 continually coming back and saying, we found this, can we
10 go get this. As you know you do have a lot of discretion
11 in appointment of a receiver and the powers that you
12 invest in the receiver. South Carolina Code and we've
13 cited in the draft of Proposed Order, the South Carolina
14 Code specifically provides for the appointment of a
15 receiver to protect assets while an appeal is pending.
16 So, there's clear statutory authority for it.

17 In the Proposed Order I tried to deal with exemptions
18 from execution like homestead exemption or provision for
19 them to have funds for living expenses. But we do think
20 it would be economically from a judicial point of view to
21 have a receiver to continue the investigation and to take
22 possession of the assets that we can identify and hold
23 them while the appeal is pending. Not dispose of
24 anything, not sell anything but just simply hold them.
25 So, we would appreciate Your consideration of that and

8

1 from hearing from us today.

2 THE COURT: Okay. All right.

3 MR. LIGHTSEY: Thank you, Your Honor.

4 THE COURT: Mr. Howard.

5 MR. HOWARD: I just received these Orders last night.

6 I have not had a chance to fully go through them.

7 THE COURT: Okay.

8 MR. HOWARD: I would ask an opportunity to comment

9 and to respond by maybe next Friday to these issues,

10 written response. I do think.

11 THE COURT: Why so long? I mean, they're Proposed

12 Orders. What about the Confidentiality Order?

13 MR. HOWARD: Confidentiality Order, I don't have a

14 problem with the Confidentiality Order.

15 THE COURT: Okay.

16 MR. HOWARD: It's the -- we'll talk about -- with

17 regard to the receiver, appointing a receiver, I don't

18 want to just say -- I think there are specifics if the

19 Court's inclined to appoint a receiver, I think there are

20 specifics in this Order that need to be addressed. There

21 are certain things that I thought were lacking in this

22 Order in particular. In particular protection for my

23 clients in the event of any damage to them. Which the

24 other side of it is, I know they're taking great pains

25 trying to avoid the statute requiring a double bond. But

1 that statute requires a double bond in an effort to
2 protect my clients from any losses or damage they suffer
3 as a result of the execution efforts being made.

4 And under these circumstances, this Order is not
5 protected them from any damage or losses they may suffer
6 as a result of these assets being put in the hands of a
7 receiver. I'm not saying Mr. O'Shea would do any harm to
8 them but if it excludes him from being harmed -- from him
9 being liable to them at all, it doesn't address whether
10 Mr. Ballard's would hold any liability to them as a result
11 of the execution efforts and taking possession of any
12 property of theirs. Personal or real. And so those are
13 source--

14 THE COURT: Well, I don't anticipate that Mr. Ballard
15 would have control over any of the assets, it would be the
16 receiver.

17 MR. HOWARD: I understand. But the statute addresses
18 the fact that -- what they're addressing in the statute by
19 requiring Mr. Ballard to post a double bond is the fact
20 that that's there to make sure that anything that happens
21 as a result -- it's his personal liability if something
22 happens while this appeal is pending. That's the point of
23 the statute. And so, yes--

24 THE COURT: So, what's --

25 MR. HOWARD: -- next Friday if you want me to give--

1 THE COURT: -- what's the code section you're
2 referring to?

3 MR. HOWARD: It's. . .

4 THE COURT: I tell you, just get that to me.

5 MR. HOWARD: It doesn't have to be next Friday. If
6 you want it earlier I could maybe get it--

7 THE COURT: Yeah, you know, this thing has been
8 dragging on for a long time.

9 MR. HOWARD: I'm not trying to drag it on. It's just
10 that I got to go to Columbia tomorrow, I'm tied up this
11 coming Friday, I have mediation on Monday. So, it's
12 just -- if you need it by maybe next Wednesday, I could
13 probably do it by next Wednesday.

14 THE COURT: I mean, if you've got specific -- we
15 don't need to get into a paper war.

16 MR. HOWARD: I'm not trying to. It's just that I
17 just got these orders last night and haven't had a chance
18 to address them. A legal issue, I do think it's
19 overreaching and that's the issue that I run into. If the
20 Court chooses to sign it, I mean, that's the Court's
21 discretion, obviously, to do it. But my opportunity to
22 appeal it.

23 THE COURT: Okay.

24 MR. HOWARD: But the statute actually is 18 -- I'll
25 find it.

Timothy Roberson - Direct Examination by Mr.
Workman

11

1 THE COURT: Okay.

2 MR. LIGHTSEY: If I could respond briefly on that,
3 the issue about the bond. That applies only if property
4 is sold. If property is sold and a good faith purchase or
5 value is taken, then that property is gone. So, I don't
6 think it would apply at all to property simply being held
7 in a bank account or warehouse or wherever while the
8 appeal is pending.

9 THE COURT: Okay. All right. Okay. All right. You
10 want to call witnesses?

11 MR. WORKMAN: Yes, we'd like to call Timothy Roberson
12 to the stand, please.

13 TIMOTHY ROBERSON, after being duly sworn,
14 testified as follows:

15 THE CLERK: Please state your name for the record.

16 THE WITNESS: Tim Roberson. Timothy W. Roberson.

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: Okay.

19 MR. WORKMAN: Is it all right if I stand here, Your
20 Honor?

21 THE COURT: Yeah, that's okay.

22 MR. WORKMAN: Thank you.

23 DIRECT EXAMINATION

24 BY MR. WORKMAN:

25 Q Yes, state your date of birth, please.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

- 1 A 12/16/44.
- 2 Q A where were you born?
- 3 A Newport News, Virginia.
- 4 Q And your social security number?
- 5 A 226-58-2097.
- 6 Q All right. And you have a South Carolina Driver's
- 7 License?
- 8 A I do.
- 9 Q And do you happen to know the number of that, sir?
- 10 A I can reach in my pocket and get it, though.
- 11 Q Do you have a driving record for any arrest or
- 12 convictions for speeding, drunk driving, suspended
- 13 license, any traffic offenses?
- 14 A No speeding, no drunk driving. No record other than
- 15 ticket. A couple years ago a speeding ticket.
- 16 Q All right. Have you offered testimony in court
- 17 before?
- 18 A I have.
- 19 Q All right, tell us about that, sir.
- 20 A Well, it was right here, this case.
- 21 Q Uh-huh. Are there any other cases in which you've
- 22 been involved where you had to testify?
- 23 A Several years ago with -- I was called as a -- I
- 24 think I was actually called as an expert witness in Baby
- 25 Super Stores owner, Zack Tabor, who was suing somebody. I

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 can't remember but I was called as an expert witness
2 there.

3 Q You actually testified in that proceeding?

4 A Yes.

5 Q Any other cases in which you have been involved in
6 were you offered testimony?

7 A Probably but nothing's coming to mind. Seventy years
8 been in courtroom a few times but I just -- I can't
9 remember anything that's been so large.

10 Q Have you ever given a deposition in any cases other
11 than this case?

12 A I gave depositions in that case I just referred to.

13 Q Okay. The baby store case?

14 A Yeah.

15 Q What's your education, sir?

16 A I have a Bachelor's of Science Degree in Business
17 Administration.

18 Q From what school?

19 A At the time it was called Atlantic Christian College
20 in Wilson, North Carolina. The name's been changed to
21 Barton College.

22 Q When did you graduate?

23 A 1968.

24 Q Have you attended any post-graduate schools?

25 A Executive business classes and courses, yes.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 Q Whereabouts?

2 A One at Oregon, one at Harvard.

3 Q Have you served in the military?

4 A No, I have not.

5 Q Tell us briefly a little bit about your work history.

6 Where you worked say after you graduated from Barton all

7 the way up to the time perhaps you retired.

8 A I started with NCR Corporation shortly after college.

9 And seven years later I, started -- or worked with a couple
10 other guys and we started our own business. Retail system
11 sales. And that was that my career job and career company
12 up through 2002.

13 Q What was the name of the company?

14 A Well, it morphed. We started out as Mid-South Cash
15 Register Sales. Moved -- when I came to Greenville it was
16 called Checkout Systems. Later Mid-South Data Systems and
17 finally Kyrus, K-Y-R-U-S.

18 Q All right. What did you do for those companies?

19 A Initially was the salesman and I was the sales
20 manager and vice president of sales. Eventually president
21 and CEO. And chairman.

22 Q You said that the ultimate name for the company was
23 Kyrus?

24 A Yes.

25 Q What is the status of Kyrus now?

- 1 A Kyrus was sold in 2002 to a company called Agilysys.
- 2 They have recently actually this year sold it again. It
- 3 goes by the name of Total Systems. It's in pretty much
- 4 the same business.
- 5 Q So, do you have any interest in those companies?
- 6 A No.
- 7 Q Are you still receiving any funds from the buyout of
- 8 Kyrus back in 2002?
- 9 A No.
- 10 Q How much did you receive when you sold the company?
- 11 A About three million dollars.
- 12 Q And this was in 2002?
- 13 A Yeah. Some of that got stretched out because it was
- 14 in escrow until some matters got cleared up. But 2002
- 15 through 2004, probably.
- 16 Q All right. What did you do with those funds?
- 17 A Invested, spent.
- 18 Q Do you still have any of those funds in retirement or
- 19 in escrow or in savings?
- 20 A No, I don't.
- 21 Q Where do you live now, sir?
- 22 A 335 Blue Water Way, West Union.
- 23 Q Do you have any other residence other than that?
- 24 A No.
- 25 Q Where did you live prior to Blue Water Way? When did

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 you move there?

2 A I lived at 100 Bogey Court in Greenville. Actually
3 it was in Taylors for 30 years, 39 years. And we moved to
4 Blue Water Way, I think, probably 2007, maybe, right in
5 that timeframe. Let's see, no, no. We've only lived
6 there for about four years, permanently. We had a -- I
7 owned it before then but we moved there permanently three
8 to four years ago.

9 Q And what happened to your Taylors property?

10 A Sold it.

11 Q And did you receive all the money at the time of the
12 sale?

13 A I sure did.

14 Q Where did you live prior to living in Taylors?

15 A Tennessee.

16 Q Tennessee. Where in Tennessee?

17 A Johnson City.

18 Q Did you work up there? Were you working in
19 Tennessee?

20 A Yes.

21 Q Tell me a little bit about your family. What your
22 wife's name is, do you have any brothers or sisters and
23 children if you had any.

24 A My wife's name is Beverly. I have two grown
25 daughters. Three grandchildren, two sisters.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 Q And I believe you said, I'm sorry, you had some
2 siblings, can you tell us who that is and their names,
3 please?

4 A Judy Roberson -- scratch that, Judy Roberson Dickers.
5 She's widowed and Natalie Roberson Smith.

6 Q And do they live in South Carolina?

7 A They live in Six Mile.

8 Q Tell me a little bit about your relationship
9 currently and in the past -- first we'll deal with
10 currently. Your current relationship with Rick Thoennes
11 and Rick Thoennes the Third.

12 A First met Rick Senior in church here in Greenville
13 probably in the early 80's. And just, you know, an
14 acquaintance. After I sold my company I was looking to
15 invest in different business opportunities. And he's been
16 a builder. So, we partnered on a couple of deals. We
17 built a clubhouse in Cliffs Keowee Vineyards. And we
18 built -- I say we built, I financed, he built, some
19 townhomes in Oconee County. And we initially had a
20 relationship on a piece of property downtown that he's not
21 any longer involved in that property. That's pretty much
22 it.

23 Q Now, you say, We. Are you talking about Mr. Thoennes
24 Senior or Mr. Thoennes the third?

25 A Mr. Thoennes Senior. Now, Mr. Thoennes Senior and

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

- 1 Q What are your daughters names?
- 2 A Kelly and Ashley.
- 3 Q What do they do?
- 4 A Kelly is a -- spends her time doing graphic design
- 5 and life coaching, primarily. And Ashley is a Pastor's
- 6 wife.
- 7 Q And what is her husband's name?
- 8 A His name is Naeem Fazal.
- 9 Q Where is he a Pastor?
- 10 A He pastors a Mosaic Church in Charlotte, North
- 11 Carolina.
- 12 Q All right. Did he previously pastor here in South
- 13 Carolina?
- 14 A He was on staff at Seacoast in Mount Pleasant, South
- 15 Carolina as a associate pastor. But he launched his first
- 16 church in Charlotte.
- 17 Q And has he ever had any connection with the Foothills
- 18 Community Church?
- 19 A No.
- 20 Q Okay. What are the full names of your daughters
- 21 again?
- 22 A Kelly Renee Roberson.
- 23 Q Uh-huh.
- 24 A Ashley -- Ashley Fazal Roberson -- no, Ashley
- 25 Roberson Fazal.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 the third were partners in some of these arrangements, so.
2 Mr. Thoennes the Third, Ricky to me, because he was that
3 big when I first met him. Was a partner in his dad's
4 business. So, he has been involved as well.

5 Q What was the name of that business?

6 A Marek Construction.

7 Q All right. Were you connected with either Ricky or
8 Mr. Thoennes Senior in any other business other than
9 Marek?

10 A No.

11 Q You did mention a property here in Greenville that
12 you had some connection with, tell us about that.

13 A Well, I think they were in as America[verbatim],
14 though. I'm not sure if they were in personally or as
15 America.

16 Q Spell that last name the again, please.

17 A I believe that was a combination of Mark and Rick,
18 M-A-R-I-C OR M-A-R-I-C-K.

19 Q And you've had no other involvement with him in the
20 business way other than the ventures that is you just
21 talked about?

22 A To the best of my knowledge. That's true.

23 Q Over the past two years have you taken any trips
24 other than trips to the beach for a week or something like
25 that? Take any travels?

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 A Not even to the beach for a week. No significant
2 trips other than to Charlotte to see grandchildren. I
3 don't think so.

4 Q Been on any cruises?

5 A No.

6 Q Okay. I want to turn now to your income. What is
7 your income now? What income you have, you and your wife,
8 family and how do you live?

9 A Well, my accessible income is social security \$2,500
10 a month. There is -- and again, the terminology might be
11 right or wrong but passive income, because I've had to pay
12 taxes every year -- or excuse me, I've owed taxes every
13 year, not paid. But the accessible income that we're
14 living on is \$2,500 a month. And the rest is borrowed.

15 Q You say -- is that \$2,500 for you and your wife
16 combined?

17 A Combined.

18 Q And you have no other sources of accessible income at
19 this time?

20 A None.

21 Q Do you--

22 A That unless I borrow it. Any income I've had I
23 borrowed it. If you're calling that income. Cash I've
24 had to borrow.

25 Q Do you have any retirement accounts?

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 A Wiped them all out; gone.

2 Q Do you have any IRA accounts at all?

3 A Spent it.

4 Q Now, how about any Roth accounts?

5 A Nothing.

6 Q There's no retirement accounts?

7 A None.

8 Q All right. Do you have any funds left over, I think

9 I asked you this, left from the sale of your business,
10 Kyrus?

11 A Zero.

12 Q Now, after Kyrus was the another business that you
13 formed?

14 A I joined a company called Integris that was just a
15 two person company to do some development. And buy and
16 sell some companies, just trying to invest money wisely.

17 Q And I believe you testified with Kyrus you received a
18 pay out on that and you used those funds completely?

19 A That's correct.

20 Q All right.

21 MR. WORKMAN: May I approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. WORKMAN:

24 Q I'm going to show you some documents and ask if you
25 can identify them?

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

- 1 A This is -- these are statements from Palmetto Bank
2 and, I guess, all three of them would be. Here's some
3 checks and here's a balance sheet from TRG, LLC. That's
4 the Form 1040 which I assume is part of my taxes, passive
5 income, yeah.
- 6 Q What year is the tax return, does it say?
- 7 A 2012.
- 8 Q All right. What entity is listed on that particular
9 page?
- 10 A TRG, LLC.
- 11 Q All right. Would you tell us about TRG, please?
- 12 A TRG, LLC that holds a building on Wade Hampton
13 Boulevard that houses the company that I sold.
- 14 Q I see. Do you have an interest in TRG?
- 15 A I do.
- 16 Q All right. It is a corporation or a limited
17 liability company?
- 18 A It's an LLC.
- 19 Q And who else has an interest in that, if anyone,
20 other than you?
- 21 A Seven or eight of us.
- 22 Q All right. But according to this 2012 Form 1040, you
23 receive income of \$207,700. from this LLC, is that
24 correct?
- 25 A If you'll read that it says passive income, doesn't

1 it?

2 Q No, sir, I don't think so.

3 A Under passive.

4 Q Look at the column here.

5 A No, I didn't. I mean, I might need to get a tax

6 accountant to explain this to us. But we get a tax

7 dividend once a year in 60 to \$70,000 range. And that

8 goes straight to Palmetto Bank to pay something else.

9 It's not accessible by me. Two hundred seven would have

10 been passive. This means I'm paying taxes on it but I

11 don't get it.

12 Q Are you familiar with that balance sheet?

13 A It's got TRG at the top.

14 Q Okay. What does it show on page two as to the value

15 of that? The equity in that business or that LLC?

16 A For December 31st, '13 it shoes 3,118,974 total

17 equity.

18 Q All right. And identify this as a bank statement

19 from TRG?

20 A Uh-huh.

21 Q What is the balance shown on that bank statement and

22 the date please of that statement?

23 A March 31st of that -- that's very recent. And the

24 ending balance, I suppose, is \$59,426.

25 Q Okay.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 MR. WORKMAN: We would like to offer these as
2 Plaintiff's No. 1 collectively.

3 THE COURT: No objection.

4 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
5 identification and received into evidence.)

6 MR. HOWARD: The only thing I'd say, that looks like
7 it's last year of April. I just want to make sure that's
8 clear.

9 MR. LIGHTSEY: It does say April 2013, thank you.

10 BY MR. LIGHTSEY:

11 Q All right. So, I think why mentioned some other
12 individuals also had an interest in this TRG. Who are
13 they and do you know the various percentages of ownership?

14 A Not of the top of my head but I can start naming some
15 names. Randy Killen, Paul Civils, Jeff Yelfman, Mike
16 Todd, I'd have to look in the file. These were
17 shareholders in the company. And the company sold ten
18 years ago, so.

19 Q The Kyrus Company?

20 A Yeah, 11 years ago.

21 Q Well, who, this may not be the right term, but
22 manages the business, handles the finances and takes care
23 of the operations of TRG?

24 A Dave Martindale.

25 Q Dave Martin?

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 A Martindale.

2 Q Dave Martindale?

3 A Yeah, I'm missing his name. He's a CPA and was an
4 officer in our company.

5 Q And where is he located?

6 A Wilmington, North Carolina.

7 Q All right. Do you receive any income from any other
8 LLC or entities?

9 A All that information is in my tax records but no.
10 I'd say something like, made two or \$3,000, I'm not even
11 sure which one. Most of them are showing losses. There's
12 one that we've, in five years, we've taken out about
13 \$10,000, maybe 12 or \$14,000. Nothing this year. Not
14 even sure about last year. No. I mean, there's no
15 regularly expected checks that I get from anybody.

16 Q All right. I do want to ask you about your home or
17 condominium in Anguilla in British Colony, Anguilla.

18 A Several years ago we had the opportunity to invest
19 with a couple of other fellows in a property that IMI was
20 marketing. We actually invested in several of them. One
21 in Philadelphia and one somewhere else. And one wound up
22 being in Anguilla.

23 Q All right. Other fellows, who else was involved with
24 you in the Anguilla property?

25 A Darryl Wicker and Larry Lollis.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

- 1 Q Do you each have a one-third interest?
- 2 A Yes.
- 3 Q All right. And describe the property, if you will.
- 4 A It's a beachfront condo.
- 5 Q Uh-huh. And when were you last there to visit the
- 6 property?
- 7 A I'm guessing four or five years ago.
- 8 Q All right. Do your other principles use the
- 9 property?
- 10 A I don't think we've ever used it.
- 11 Q Does it generate income?
- 12 A It's paying its dues and I've know gotten a check
- 13 from it. So, it's generating income but it goes back into
- 14 the fees and to any income that would be generated would
- 15 still go to first Larry Lollis because there's some debt
- 16 on it to him.
- 17 Q Is there a mortgage on the property?
- 18 A I don't know if Larry has a mortgage on it or not.
- 19 When we closed we had to come up with extra money and he
- 20 put it in. So, how he handled that I don't know. There's
- 21 not a typical bank mortgage that I'm aware of.
- 22 Q Do you own your -- do you have a one-third interest
- 23 or in the -- or in connection with the LLC? In this
- 24 property in the West End?
- 25 A You know, I don't -- I think it's through a run

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 [verbatim] company. I think -- I think it is, I'm not
2 positive. I think we've got one called Sozo Anguilla.

3 Q You have two companies, Sozo and Sozo Seven, don't
4 you?

5 A I've got Sozo, I've got Sozo Seven, Sozo Anguilla.
6 Sozo Anguilla was specifically this project property
7 you're talking about.

8 Q All right. Do you remember what that purchase price
9 was for the condo in Anguilla?

10 A It was about two and a half million dollars.

11 Q And you paid another \$250,000 for furnishings, didn't
12 you?

13 A It was already furnished.

14 Q Okay. So you don't remember the additional \$250,000
15 for furnishings?

16 A It was already furnished from the day I saw it. That
17 was part of the package. We didn't pick out furniture, we
18 didn't go anywhere and buy it.

19 Q I think you said you hadn't been over there in
20 several years, is that correct?

21 A Actually since it's been built and completed, I've
22 never been there. I went to the property to see the site
23 twice before it was built and I saw it. First I saw it
24 just the site and it was nothing. Then I saw it when it
25 got a roof but it was still concrete. And that's the last

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 I've been there.

2 Q What's your intention with regard to that property?

3 A It's for sale.

4 Q For sale. And basically the property is rented out
5 from time to time if you can find vacationers?

6 A We don't find that. We turn it back over to -- it's
7 in the resort community. They have a program you just
8 turn it back over to them. They handle all of that. This
9 was an investment.

10 Q Do you have any paper work on this company, monthly
11 statement, annual statement?

12 A I'm sure I get an email once a year saying something
13 but I don't keep a file on it.

14 Q All right.

15 A But they're available because you subpoenaed my
16 partner that does keep all of that.

17 Q I believe at one time you also owned some property in
18 Philadelphia?

19 A I did.

20 Q Tell us about that.

21 A It was the same thing. It was with money that I had
22 invested after selling my company. I bought that.

23 Similar to the time that we bought the Anguilla property.

24 And I had a opportunity to buy a condo, new property that

25 a high rise. I bought it. They finished it out. I

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 visited it once while it was under construction. Never
2 been back. The market fell out and I lost it.

3 Q You lost it. Was it through a foreclosure?

4 A Yes.

5 Q Okay. And was there a court proceeding in
6 Philadelphia involving it? That forecloser.

7 A I can't tell you. I mean, I didn't go to
8 Philadelphia. If there was one it didn't require my
9 presence.

10 Q Who lived in the condo if you know?

11 A I don't think anybody ever lived in it. We had -- we
12 had two. I had one and Dale Whitaker had one. He
13 managed -- we have made had some -- yeah, I may have had
14 some renters for a while. I think I did actually, yeah.

15 Q Okay. And you say you lost it, what year was that?

16 A That was that year I ran out of money. Because I
17 kept paying on it until the cash went away. That might
18 have been 2008 or 9, possibly. I can't really say.

19 Q Did you no longer have any interest in this Metro
20 Club Property in Philadelphia?

21 A No, I think I've got a judgment, that's my only
22 interest in it. I'm not even sure about that but yeah,
23 it's gone.

24 Q You also owned some property in Asheville as recently
25 as 2009, 2010. Do you still own that property?

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

- 1 A Lost it to the bank.
- 2 Q All right. How did you lose that?
- 3 A That's what happens when you don't pay them.
- 4 Q You went through a forecloser on that, too?
- 5 A I guess, yeah. Because it -- I didn't pay them, it's
- 6 over, yeah.
- 7 Q All right. Where was this property located?
- 8 A It was in the Cliff's Walnut Cove in Asheville.
- 9 Q Did you ever use that property?
- 10 A It was just dirt.
- 11 Q And when do you think you lost that property?
- 12 A Probably in that same time. I didn't -- I lost the
- 13 property when I ran out of cash. Because I kept paying up
- 14 to the last. That's how I got through all my IRA's all my
- 15 available cash funds. I paid out everything until I could
- 16 no longer pay. And that was probably in that, I'm
- 17 thinking, I can go back and see the record but, you know,
- 18 2008 to 2009 timeframe. And when I quit paying on that or
- 19 any of these other properties, it was when it was all
- 20 gone. I didn't squirrel anything away or try to do any
- 21 strategic foreclosures or anything. I actually paid
- 22 \$30,000 a month in interest payments until it was gone.
- 23 Q You're testifying, you're saying that you ran out of
- 24 money in sometime in 2008-2009? You quit making any
- 25 payments on it.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

- 1 A If I'm a year off. Yeah, I just have to go back and
2 look at the letters I wrote, the notes I made. With
3 family and friends stuff to know when that was. But maybe
4 it could have been '10. You know, this is '14 now, so I
5 don't know.
- 6 Q Did you at any time have any property in Charleston,
7 South Carolina?
- 8 A I did.
- 9 Q All right. And what's the status of that?
- 10 A It's gone.
- 11 Q Same story?
- 12 A Similar, different twist. I had it in a -- it was in
13 this Integris company that I had told you about earlier.
14 And when we settled up with -- with that company just
15 divided up whatever assets were there, there was two of
16 us. He took something, I took something and I gave him --
17 I gave him the condo. I couldn't afford to make payments
18 on it.
- 19 Q Who was that other person?
- 20 A Bill Cox.
- 21 Q Bill Cox. Okay. But you're saying you don't have
22 the Charleston property anymore?
- 23 A I haven't had it for seven years, I don't understand.
24 Six or seven years.
- 25 Q Where was it located?

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

- 1 A Sir?
- 2 Q Where was it located, I'm sorry?
- 3 A In Wild Dunes, Isle of Palms.
- 4 Q All right. In the last ten years did you have any
- 5 other investment properties that you've lost?
- 6 A Yeah. Well, investment property and business. You
- 7 know, I just try to diversify. But you're looking for
- 8 property.
- 9 Q Yeah, I appreciate that but right now we're just
- 10 looking just at properties.
- 11 A Property. One, two, three, four lots on Lake Keowee.
- 12 Q Uh-huh.
- 13 A I can't think of anything else but it's possible.
- 14 Q All right. Let's turn to this property--
- 15 A Well --
- 16 Q I'm sorry?
- 17 A You're familiar with Gateway down here. That's a
- 18 entity--
- 19 Q Yes, I'm going to talk to you about that in a few
- 20 minutes.
- 21 A Across the street. Back there somewhere.
- 22 MR. WORKMAN: If I may approach, Your Honor.
- 23 THE COURT: Uh-huh.
- 24 BY MR. WORKMAN:
- 25 Q I'm going to show you some aerial recon photos and

1 ask if you can identify them?

2 A Yeah, Dayspring, that's one I left off. There it is

3 right here, I think.

4 Q All right. What do those photographs show?

5 A Appear to show the property on Wade Hampton

6 Boulevard. That's in the Dayspring, LLC.

7 Q Tell us about Dayspring, LLC?

8 A Dayspring, LLC was formed in 1997, maybe sometime in

9 there. No, maybe 1994. Sometime. But anyway, it was

10 formed to hold the building that my company worked in.

11 Q And your company was the Kyrus?

12 A Kyrus.

13 Q Kyrus, excuse me.

14 A Yeah.

15 Q Is this the old Kyrus Plant shown on one of these

16 recon photos? Aerial photos?

17 A Yes. Yes.

18 Q And on the other photo, what does that show?

19 A That shows the property adjacent to it that's got a

20 house on it.

21 Q I see.

22 A Both of those were held by Dayspring.

23 Q Were held or are they still held by Dayspring?

24 A Well, that's a good question. I'll try to answer it

25 but it's probably to -- a banker needs to tell me exactly.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 It's been sold with a title in lieu, I believe is the
2 term, to a church. And the church's pastor. The house to
3 pastor to building to the church. It's -- we're still on
4 the hook basically because they leveraged our loan so
5 we're responsible by default. I'm not sure legally how
6 you would -- if that's considered -- it's a title in lieu
7 is what I was told. We're not to allow -- they didn't
8 have the funds to buy it so we financed it for them. So,
9 the title is somehow, from the bank's point of view,
10 they're responsible for the payments. But if it all falls
11 away we've got it back and we're responsible for the
12 payments.

13 Q You say, We. Who else is involved in Dayspring other
14 than yourself?

15 A There was three of us.

16 Q Who are they?

17 A Dave Martindale, I mentioned earlier. Steve Nesbitt.

18 Q Uh-huh. And Dayspring is still in existence?

19 A Yes.

20 Q But your testimony is that this property's been sold
21 to a church?

22 A Correct.

23 Q And what was the purchase price?

24 A The contract price is million and a half dollars.

25 Q Uh-huh.

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 A The house was sold, I think, for like \$90,000.

2 Q So, you'll stand to get a portion of this money the
3 church complies with the contract?

4 A I get zero.

5 Q Why is that, sir?

6 A Well, the -- had a pretty heavy leverage with
7 Palmetto Bank. My partner in Asheville who use to be my
8 partner in our business before he retired.

9 Q Who is that?

10 A Steve Nesbitt.

11 Q Okay.

12 A Decided two years ago that he could get money cheaper
13 than Palmetto through his IRA or investment accounts
14 somehow. So, he paid off -- and he owned half, he owned
15 51 percent, I think, of the property. So he paid his half
16 off.

17 Q Uh-huh.

18 A So, the bank balance doesn't represent the balance
19 owed on the building because we still owe him 51 percent
20 of whatever. So, if the church winds up paying a million
21 and a half dollars tomorrow, the bank would get their's,
22 Steve would get his, I get nothing. And neither does my
23 other partner because we were basically just trying to get
24 out of it and sell it for cost?

25 THE COURT: Is all that in writing?

TIMOTHY ROBERSON-DIRECT BY MR. WORKMAN

1 THE WITNESS: Sure.

2 THE COURT: Is there a written document somewhere?

3 THE WITNESS: I mean -- you mean one to write up to
4 describe it or can you piece all that together through
5 documents? Sure, yes. Everything is, I mean, contracts,
6 emails.

7 THE COURT: No, I'm talking about a executed
8 document. Is a personal guarantee issued by you and the
9 other gentleman? What is the. . .

10 THE WITNESS: We're -- we're personally guaranteed to
11 the bank. He's -- when he paid his off -- I'm trying to
12 remember did he get released from the personal guarantee
13 or not, I'm not sure.

14 THE COURT: Are there documents between you and
15 Mr. Nesbitt?

16 THE WITNESS: Yes.

17 THE COURT: Where are they? Do you have those?

18 MR. WORKMAN: No, Your Honor, we made a subpoena to
19 Dayspring, there's been no response to this point. That
20 is part of the motion. And I don't believe we have any
21 information that's been responsive to our subpoena. Let
22 me double check on that but.

23 THE COURT: Well, let me ask you this--

24 MR. WORKMAN: That's within one of the various
25 companies that we made subpoena to that's been no

1 response.

2 THE COURT: Okay.

3 MR. WORKMAN: So, we did not know this.

4 THE COURT: Okay. Okay.

5 Why are we going to go through this exercise? Why
6 wouldn't I turn it over to Mr. O'Shea as a receiver to go
7 through this and have him report back to me. And then for
8 me to determine what sanctions would be needed for failure
9 to comply with the Court's Order.

10 Tell me that, Mr. Howard.

11 I haven't sat through supplemental proceedings since
12 I was a baby lawyer in front of Judge McGowen. And I'm
13 not inclined to conduct a hearing -- I don't know why we
14 wouldn't do this either through depositions or just turn
15 it over to Mr. O'Shea and let him do it. If people are
16 monkeying around with the Court's Order, there will be
17 sanctions.

18 MR. HOWARD: I'm trying to understand where they
19 would be monkeying around with the Court's Order.

20 THE COURT: Where are the Dayspring documents that
21 Mr. Roberson has just testified to under oath that exist
22 and have not been supplied pursuant to subpoena?

23 MR. HOWARD: Well, Your Honor, I don't control
24 Dayspring.

25 THE COURT: Okay. Well, you do represent

1 Mr. Roberson, correct?

2 MR. HOWARD: I do, Your Honor.

3 THE COURT: And I think as part of your counsel to
4 him he should understand that when a subpoena's issued to
5 a entity that he is a one-third or previously one-third
6 but still in control of, that he needs to comply with the
7 subpoena.

8 MR. HOWARD: There are persons to which that subpoena
9 was issued. I apologize --

10 THE COURT: I mean, look, why are we playing games?
11 This is just costing everybody more money. That's what
12 this comes down to.

13 MR. HOWARD: I don't suspect that anybody's playing
14 games. I don't understand that.

15 THE COURT: Well. Where are the documents? Why
16 hasn't this been done?

17 Mr. Fayssoux?

18 MR. FAYSSOUX: Your Honor, as a friend to the Court
19 on this, I actually represent Rick Thoennes who is not
20 subject to this proceeding.

21 THE COURT: Okay.

22 MR. FAYSSOUX: However, I'm almost sure that these
23 are matters of public record. That there is a Bond for
24 Title recorded on this property that Mr. Roberson was
25 testifying about. And I mean, I don't know anything about

1 production of subpoena, who didn't do it, who did do it,
2 but I do believe that there are public records, that
3 evidence, that there is indeed a Bond for Title. And that
4 there is indeed a large mortgage on this property from the
5 bank.

6 THE COURT: A Bond for Title between who?

7 MR. FAYSSOUX: Between the church and the group
8 called Dayspring.

9 THE COURT: Okay.

10 MR. FAYSSOUX: That they --

11 THE COURT: That supposedly Nesbitt --

12 MR. FAYSSOUX: -- sell to the church -- of course,
13 technically a violation of the terms of the mortgage. But
14 they did have an agreement to sell the property to the
15 church, I don't know the amount or anything like that, but
16 they -- and I think it's probably of record. I don't know
17 from sure but something in my mind tells me that it is.
18 It could be found easily.

19 THE COURT: Well, it can be found when a subpoena is
20 issued.

21 MR. FAYSSOUX: Yes, sir, I understand that.

22 THE COURT: And we wouldn't be going through this
23 wast of time.

24 MR. LIGHTSEY: I agree. Yes, sir.

25 THE COURT: I don't know what everybody thinks is

1 going on but this is -- when a subpoena is issued, it's
2 a -- you must comply with it or face the consequences.
3 This case been gone on for how long? Five years? I don't
4 know.

5 MR. LIGHTSEY: Six.

6 THE COURT: Six. It is coming down to the end. I'm
7 not inclined to sit here all day and go through a thorough
8 examination like this when I think Mr. O'Shea can probably
9 do it and make a report to the Court.

10 Mr. O'Shea, would you agree that's something you
11 could do given the proper authority?

12 MR. O'SHEA: Yes, Your Honor, it is.

13 THE COURT: Okay. Which is what I would circuit.

14 MR. HOWARD: I have no opposition to the deposition,
15 to conduct this by deposition. I think that's probably
16 appropriate. I have no opposition to that. I do --
17 before there's the appointment of Mr. O'Shea, I did
18 represent to my clients, there is a potential conflict
19 that I have with Mr. O'Shea. He's an expert witness on
20 the other side of a case in which I'm involved. And at
21 some point I'm going to have to depose Mr. O'Shea. And
22 so, I just --

23 THE COURT: Well, he's been deposed before, how is
24 that a conflict?

25 MR. HOWARD: Well, it's -- well, I just got to make

1 sure. He's supposed to be serving as a neutral in this
2 circumstance. So, I represented that to my clients and I
3 think it's -- Mr. O'Shea may be deemed acceptable. But I
4 just want to make sure it's clear on the record, it's
5 potentially a conflict.

6 MR. LIGHTSEY: I don't think it's a conflict, Your
7 Honor. If it is we would waive it.

8 THE COURT: Let's turn it over to him. Let's get it
9 get it done. Give him the power, the authority to collect
10 these records. And I'm telling you failure to do it is
11 going to result in sanctions. Monetary or otherwise.
12 We're sitting in here with one, two, three, four, five
13 lawyers. How much do you think that's costing? We're
14 talking about judicial economy. Mr. O'Shea can do this
15 less expensively than we can do this today. So --

16 And I'm sorry to cut you off in the middle of your
17 examination, Mr. Workman--

18 MR. WORKMAN: No, I understand, Your Honor. I fully
19 understand.

20 THE COURT: What I would like to see then is -- I'm
21 just ordering the named Defendants with the exception of
22 Mr. Thoennes the Third, based on his bankruptcy filing, to
23 comply with the subpoena requests. The only other Rule to
24 Show Cause that I want to see in this is when they don't
25 and we're back up here for sanctions. And I'm going to

1 appoint Mr. O'Shea as the receiver and let him get to
2 work.

3 I don't think 18-9-130 applies in this matter because
4 he is not going to have the authority to sell anything
5 pending the outcome of the case. We are going to Marshall
6 the assets. And I would just caution everyone that if
7 they are trying to secrete assets, which would be subject
8 to satisfy a judgment, that there will be sanctions.
9 There's a Court Order that they comply with. And contempt
10 of court can include all kinds of remedies. I'll let the
11 lawyers explain that to the clients.

12 But at this time, anything else? I'm sorry.

13 MR. WORKMAN: That's all right, Your Honor, but I
14 would like to complete the record to introduce these--

15 THE COURT: All right, which you've already asked.
16 That's fine.

17 MR. WORKMAN: -- identify the Dayspring property.

18 THE COURT: Okay.

19 MR. WORKMAN: Plaintiff's No. 2.

20 THE COURT: All right.

21 If you all need to--

22 MR. WORKMAN: Thank you, Your Honor.

23 THE COURT: -- convene depositions to finish this,
24 certainly that's part of it. Okay? But this is, you
25 know, we're just not going to sit around and spin our

1 wheels. Still would have to do this anyway. The
2 collection of the records and all that sort of thing.
3 Okay?

4 Thank you, Mr. Roberson, you can step down.

5 MR. HOWARD: Fair enough.

6 THE COURT: All right, I'm going to sign the Orders.

7 MR. FAYSSOUX: Thank you, Your Honor.

8 MR. LIGHTSEY: Thank you, Your Honor.

9 THE COURT: Thank y'all.

10 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
11 identification and received into evidence.)

12 (WHEREUPON, the proceedings were concluded.)
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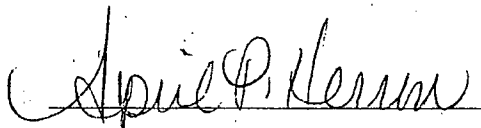
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the
 Thirteenth Judicial Circuit of the State of South
 Carolina, do hereby certify that the foregoing is a true,
 accurate and complete Transcript of Record of the
 proceedings had and evidence introduced in the trial of
 the captioned case, relative to appeal, in the Court of
 Common Pleas for Greenville County, South Carolina, on the
 23rd day of April, 2014.

I do further certify that I am neither of kin,
 counsel nor interest to any party hereto.

August 6, 2014



APRIL P. HERRON, Court Reporter

State of South Carolina
County of Greenville

Court of Common Pleas

Andrew P. Ballard, et al)	
)	
Plaintiff,)	Transcript of Record
v.)	2008-CP-23-05739
)	
Tim Roberson, Rick Thoennes, Rick Thoennes III, and	
Warpath Development, Incorporated.)	
)	
<u>Defendant.</u>)	

January 27, 2017
Greenville, South Carolina

B E F O R E:

The Honorable Edward W. Miller, Judge.

A P P E A R A N C E S:

Wallace Lightsey, Esquire
Attorney for the Plaintiff

Amos Workman, Esquire
Attorney for the Plaintiff

Joshua Howard, Esquire
Attorney for Defendant Tim Roberson

James Fayssoux Sr., Esquire
Attorney for Defendant Rick Thoennes III

Michael Oshea, Esquire
Appointed Receiver

Lisa Scott
Circuit Court Reporter

WITNESS

I N D E X

PAGE

No Witnesses.

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

No Exhibits.

P R O C E E D I N G S

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THE COURT: Are you ready?

MR. LIGHTSEY: Would you like me -- would you like me to proceed?

THE COURT: Yes, please.

MR. LIGHTSEY: May it please the Court?

There's several matters before you this morning in connection with this case. I know you're familiar with the facts and the background of this case.

All of the pending matters relate to collection of the judgement that you entered against the defendants in October of 2013, which was affirmed by the Court of Appeals with a slight reduction in the amount in July of 2015.

After that occurred, the defendant sought further review from the State Supreme Court. It denied cert in September of last year.

This case was filed in 2008. It has been pending now for nine years. The defendants have lost every step of the way. Every time they have come into court, they have lost on the legal issues and factual issues, but they have succeeded in dragging this case out for nine years, through two

1 trials, through two appeals, multiple hearings
2 before you. It's time for them to pay the piper.
3 The day of reckon has come, and they're still in
4 here asking you for mercy.

5 Tim Roberson even has the audacity to ask the
6 Court for relief from judgement on the ground that
7 Duke Power terminated the lease as a result of his
8 own failure to carry out his contractual obligations
9 that he assumed in his agreement with Andy Ballard.

10 It is undisputed, Your Honor, that the reason
11 Duke terminated the lease is that the defendants did
12 not develop the property as they agreed to do in
13 their contract with Mr. Ballard.

14 I will hand up a copy of the notice of
15 termination -- or the actual termination. And it
16 states explicitly that the lease is being terminated
17 for failure to comply with the consensual plan
18 required by the lease for nonperformance by the
19 lessee.

20 Their own failure, the defendants' own failure
21 and Tim Roberson's own failure to carryout their
22 contractual obligations is the reason that Duke
23 terminated this lease. Roberson agreed to provide
24 the necessary capital to obtain financing for this
25 development.

1 He's basically coming in now and saying, "Well,
2 I tried," and he wasn't able to do it. The contract
3 does not say, "I agree to try to get the financing
4 for this development." What the contract says is
5 that Tim Roberson will provide the necessary capital
6 to obtain long-term financing. And he never did
7 that, and we know why.

8 There was testimony about this in the
9 2000 trial -- 2010 trial. There were findings of
10 fact in the year 2010 order about this. Roberson
11 recognized before he ever signed this contract with
12 Andy Ballard that he would have to likely have to
13 put up 60 percent of the cost of the development in
14 order to get financing. He acknowledged that in an
15 e-mail that was sent before the contract was signed.

16 After the contract was signed, Duke Power did
17 not approve the 200 boat slips that Roberson had
18 based his cash -- cash projection on. They approved
19 only 102 boat slips. And Tim Roberson decided then
20 that he didn't like the economics of the deal that
21 he had already agreed to, that the projected income
22 was going to be less than what he had been
23 threatened.

24 So he and the other defendants then tried to
25 improve the economics of the deal for themselves for

1 purely selfish reasons by trying to force
2 Mr. Ballard out. And when he came in and stopped
3 them from squeezing him out, then tried to wipe out
4 the value of his equity and interest in the company,
5 and this is why Duke terminated the lease nine years
6 later.

7 Because instead of simply doing what they had
8 agreed in their contract to do, they put their
9 energy and efforts into forcing Mr. Ballard out.
10 That's what they're still trying to do today, to
11 wipe out the value of his investment in this
12 company.

13 It's time to put an end to this. It's time for
14 them to pay the piper. They've had two trials.
15 They've had two appeals. They have had more than
16 their share of due process. To do anything less
17 would make a mockery of the last nine years of
18 litigation that they've put us through, that they've
19 put you through, the South Carolina Court of
20 Appeals, and the South Carolina Supreme Court.

21 They're here asking you to make all of that
22 irrelevant, all of the last years -- last nine years
23 of work that we've been through. We're begging you,
24 don't let them get away with this. After nine years
25 of litigation, nine years of our seeking justice

1 where we have won every step of the way, let them
2 off the hook now and reward them for stringing this
3 out for so long would be an utter travesty.

4 There're four matters before the Court, four
5 specific matters. We have moved to modify the
6 receivership that you put in effect three years ago
7 to make it one receivership in aid of execution and
8 to authorize the receiver to begin distributing
9 assets, pay down with the judgement.

10 We've also made a motion to determine that all
11 or a part of the judgment as to the defendant Rick
12 Thoennes III is attributable to oppression -- acts
13 of oppression that were committed by him after his
14 bankruptcy in 2010.

15 The receiver, Mike Oshea, is here, sitting in
16 the back here. He has filed a motion on his own
17 behalf to compel the transfer of Tim Roberson's
18 interest in several LLC's into the receivership, and
19 that's before the Court.

20 And then finally, Mr. Roberson has -- has moved
21 for relief from judgment.

22 So those are the four things before you in
23 terms of Mr. Wilson, and Mr. Workman and I have
24 provided an argument on those. We can take those
25 however -- however you wish, or we can just -- we

1 can just go ahead with our -- with our motions
2 and -- and proceed from there, however the Court
3 wishes.

4 THE COURT: That's sort of an opening
5 statement. Anything you want to tell me?

6 MR. FAYSSOUX: Your Honor, other than I -- I
7 disagree. Your Honor, I'll be -- I've been on the
8 periphery with this case, not near as long as the
9 rest of y'all. I got involved strictly on behalf of
10 Rick Thoennes III.

11 The reason why you haven't seen me at any of
12 these hearings and the reason why we haven't been a
13 part of this case is because Rick Thoennes filed
14 bankruptcy at the end of 2011, beginning of 2012.
15 He has been discharged from this debt. That's why
16 we haven't been involved in these hearings until
17 now.

18 Recently, they filed this motion based on what
19 we think is a tortured sentence out of one of your
20 orders, that is a finding you never made. And
21 they're trying to claw him back in and claim that
22 there was some finding by you of misconduct post
23 your 2010 liability order and in between your
24 valuation order by my client. He hadn't had
25 anything to do before that.

1 I'm happy to argue the merits of that motion
2 after I hear what Mr. Wilson and Mr. Lightsey has to
3 say, but that's -- that's why I'm here, on the
4 bankruptcy issue.

5 THE COURT: Okay.

6 MR. HOWARD: Judge Miller, you -- you and I
7 have seen each other for a number of years on this
8 case and I go back to the beginning. And so,
9 certainly, I've been up here, and we've walked
10 through this with Mr. Holleman and now Mr. Lightsey
11 and everybody else involved.

12 Mr. -- what we stand before you today is,
13 certainly, to disagree with their assessment of
14 where we stand today. Certainly, disagree with
15 their assessment of our motion, and to -- we can
16 argue that at the appropriate time.

17 I would just say that Mr. Roberson had made
18 continuous -- continuous efforts that have been put
19 on the record and in the transcripts, which I would
20 incorporate here and throughout this entire
21 proceeding.

22 And those efforts have been to do nothing more
23 than to develop the Warpath Marina. And he's
24 done -- he's made effort after effort after effort
25 after effort, and they're all documented in the

1 transcripts.

2 Even up until the last day, as you can see from
3 his affidavit, there were further efforts ongoing.
4 This was all part of a conversation that
5 Mr. Lightsey and I were engaged in and -- and trying
6 to reach a resolution of this.

7 And, ultimately, Duke Energy made their
8 decision and they unilaterally pulled it over the
9 objection of Mr. Roberson. He continued to fight
10 and continued to fight all the way up until the
11 point that they just wouldn't hear from us anymore
12 or from Mr. Roberson anymore.

13 And so that's why we stand in front of you
14 today. And we could talk about the Rule 60(B)(5).
15 I'm prepared to discuss it. And -- and I understand
16 that they're going to disagree with it. And I
17 understand that what we leave to you in this case,
18 it's an equitable matter. It's an equitable
19 decision. And we leave to you to determine upon
20 your good conscience what you're going to do in this
21 matter and how the Court is going to proceed. I
22 appreciate you're time.

23 THE COURT: All right. Any -- you listed
24 the -- the motions in order. Is there any reason
25 not to follow that? The first one is to modify the

1 receivership.

2 Any -- all right. Let's go with it.

3 MR. WORKMAN: Thank you, Your Honor. Amos
4 Workman for the plaintiff.

5 Very short, Your Honor. A motion -- a
6 receivership order was appointed in aid of
7 execution, subject to an appeal back in April of '14
8 under 15-6510 of the South Carolina Code, as well as
9 the Section 15-39430 of the Code.

10 The powers were somewhat confined under that
11 order because of the pending appeal. The receiver
12 was entitled to locate, identify, and marshal assets
13 and do related discovery, but was unable to or was
14 ordered not to dis -- dispose of any assets or
15 distribute any assets pending the appeal.

16 Now, of course, as Mr. Lightsey has stated, all
17 appeals have been exhausted. The judgment is in
18 place, and no part of the judgment has been paid.
19 The receiver has in his possession now assets that
20 could be paid over to the plaintiff to be applied
21 toward the judgment. And we anticipate that he will
22 gain other assets that should be paid over to the
23 plaintiff to be applied toward reduction of the
24 judgment.

25 So we are asking the Court to direct the

1 receiver to pay over these assets to the counsel for
2 the plaintiff so that we can apply them toward the
3 satisfaction of the judgment. And we would ask that
4 these powers be ongoing as I think are clearly
5 allowed by statute so that he may continue to seize
6 any assets of any of the defendants to be delivered
7 to plaintiff's counsel to be applied toward
8 satisfaction of the judgment.

9 So we request that the receivership order be
10 modified accordingly in view of the fact of the
11 exhaustion of appeals and our right to proceed with
12 execution levy, with the aid of the receiver. Thank
13 you.

14 THE COURT: All right. Just -- what is the
15 total amount of the judgment as of today? Do y'all
16 know?

17 MR. LIGHTSEY: With interest, Your Honor,
18 it's -- I would say it's roughly three-and-a-half
19 million. It's reduced to 3,125,000 by the Court of
20 Appeals. And with interest, it's -- I think it's
21 seven-and-a-half percent at that time for two years.
22 It gets it up to about 3.5, but I don't have the
23 precise.

24 THE COURT: Okay. All right. And how much --
25 how many assets -- what's the size of the asset that

1 the -- Mr. Oshea, you ---

2 MR. OSHEA: Your Honor, at this moment, what
3 I've been doing is maintaining a bank account, as
4 directed, paying Mr. Roberson's monthly expenses.
5 The amount that exceeds those payments at this point
6 is approximately \$64,000. And I've collected a
7 total of about 261,000 since my appointment in the
8 case of Mr. Thoennes.

9 I have been just offsetting the exact amount,
10 what is needed for his monthly bills, against the
11 draw from his salary and/or draw from the business.

12 THE COURT: Okay.

13 MR. OSHEA: So there's nothing available for
14 him.

15 THE COURT: Okay.

16 MR. LIGHTSEY: And for future purposes, Your
17 Honor, this is part of the receiver's request to
18 transfer ownership interest into the receivership.

19 Mr. Roberson has a substantial ownership
20 interest in the LLC that has some local commercial
21 property that's being rented. The -- the mortgage
22 on that property is completely paid off now.

23 The property is generating about \$50,000 a
24 month in profits. And so if we could -- if we could
25 get that into the receivership, that would be a

1 significant contribution toward getting this
2 judgment paid down.

3 Mr. Roberson also owns a significant interest
4 in property in Anguilla that's valued at \$3 million,
5 and then some additional commercial property in
6 Greenville that's -- that's valued at
7 \$2-point-something million.

8 THE COURT: Okay. All right. What do y'all
9 want to tell me?

10 MR. FAYSSOUX: Just on behalf of the
11 Thoennes's, Your Honor, Rick Thoennes Sr. and Rick
12 Thoennes III. We'll address the issue with Rick
13 Thoennes III in a second with regards to the
14 bankruptcy. I don't think he has anything
15 whatsoever to do with any modification to the order
16 of receiver so it wouldn't matter.

17 With regards to Senior, I just would simply say
18 that he has cooperated completely from day one in
19 terms of disclosure of assets and supplemental
20 proceedings, depositions, just informal meetings
21 with the attorneys any time they ask to be
22 completely upfront about where he is with his
23 assets.

24 It's a no-asset case as it applies to Rick
25 Thoennes Sr. He's got a 2007 Pontiac, a Sea-Doo,

1 some furniture that's in a house that's upside down
2 if you consider his wife's ownership and interest.
3 I don't know if the receiver can find anything any
4 different, other than we've cooperated. So whatever
5 your decision is.

6 THE COURT: So you don't mind him paying the
7 \$64,000 over to counsel?

8 MR. FAYSSOUX: That's not our money. That's
9 Roberson's money.

10 THE COURT: Anything?

11 MR. HOWARD: Yes, Your Honor. One thing I
12 forgot to say earlier is that Mr. Roberson regrets
13 that he's unable to attend today. His wife is in
14 surgery and has had surgery. She's been basically
15 continuously in the hospital since Christmas. And
16 unfortunately due to that circumstance, he's not
17 able to attend today.

18 The -- what I -- I did file earlier because I
19 did contact him last night. I don't know if you saw
20 it, but there's an affidavit in opposition to this
21 that we did file earlier. It's ---

22 THE COURT: I don't see it.

23 MR. HOWARD: That's if you got your copy.

24 MR. LIGHTSEY: Your Honor, we haven't received
25 this before.

1 MR. HOWARD: Your Honor, it's nothing more than
2 just a recitation of just where they sit right now
3 in their life.

4 MR. LIGHTSEY: I -- I have no objection to
5 this, Your Honor.

6 THE COURT: Okay.

7 MR. LIGHTSEY: I would note that the
8 investments listed under number seven are not
9 complete. There's the Anguilla property, and
10 there's also additional commercial property in
11 Greenville.

12 MR. HOWARD: Well, it is qualified by the ones
13 that distribute. The Anguilla property doesn't
14 distribute. It -- it has an asset value, but
15 that's -- that's the only reason I put that in
16 there.

17 The -- essentially, Your Honor, number one, we
18 object on the basis and fact that we have a pending
19 Rule 60(B)(5) motion at this point and pending --
20 pending appeal of that.

21 Number two, we object to the modification of --
22 on the basis that at least some portion of it, we
23 believe, is inequitable.

24 Mr. Roberson has around \$2,000 in Social
25 Security that he gets paid. Outside of that,

1 there's no salary. He doesn't carry a job.

2 He and Mrs. Roberson, at this point who is --
3 he's the sole supporter for, is in rather poor
4 health. They're having to carry a lot of fixed
5 expenses for later on, the ability to have a roof
6 over their head, have a health insurance supplements
7 obviously to -- to their Medicare, and -- and other
8 fixed expenses associated with that.

9 Those exceed any Social Security and any other
10 income he has right now. The only ability for him
11 to maintain even a minimal level of life is to
12 actually -- is to receive monies out of the -- out
13 of whatever is being collected by the receivership.
14 I think ---

15 THE COURT: Well, what about this other
16 property? He's got -- they're talking about over
17 \$5 million in property. Liquidate and give it over.
18 Where's the -- where's the \$50,000 a month going in
19 rent?

20 MR. HOWARD: From what I ---

21 THE COURT: Is that not right?

22 MR. HOWARD: That -- he does -- Your Honor, he
23 does not own that outright. That is owned -- he
24 owns less than 50 percent of that LLC, and the
25 property sits inside the LLC. That's another issue.

1 We can go ahead and bring it up, but the -- I
2 don't know that this Court has the authority to sign
3 over his membership interest into the receivership,
4 number one, because there are operating agreements
5 out there that govern that and the -- and the -- and
6 the ability of those members, of those LLC's, to
7 choose who's going -- who they're going to be a
8 member with. And so under those circumstances ---

9 THE COURT: Well, let me -- let me just say
10 this. This has been going on way too long. If he's
11 got an interest in \$5 million in property and this
12 LLC is getting \$50,000 a month in rents, I mean,
13 I -- I would not wish harm on anyone, but for him to
14 claim that he can't meet his expenses, but what's --
15 what's going on with the 50,000 a month?

16 MR. HOWARD: Well, Your Honor ---

17 THE COURT: Where is that?

18 MR. HOWARD: I apologize. Your Honor, he's --
19 they're using -- that money is necessary to meet the
20 expenses. There's been a portion ---

21 THE COURT: Well, I guess you could live a
22 pretty high lifestyle on \$50,000 a month.

23 MR. HOWARD: Your Honor, the receiver -- I
24 think the receiver can speak to that. His -- his
25 expenses, they're not -- are not 60 -- \$50,000 a

1 month.

2 THE COURT: Yeah, I -- I know. So where's the
3 money? That's my -- does the receive -- all we're
4 talking about is putting the receiver in his shoes
5 in the -- in the LLC.

6 MR. HOWARD: Well, the LLC is an ongoing
7 company. What I was going to suggest ---

8 THE COURT: Yeah, that happens all the time.

9 MR. HOWARD: I understand. Now, you have --
10 you have other parties that have an interest in this
11 too. And I don't -- and coming in here and saying
12 that the receiver now has some operational -- has
13 his vote at this point ---

14 THE COURT: Right.

15 MR. HOWARD: --- affects those parties too.
16 And so I think that -- I mean, they're -- they
17 probably need to be joined on this motion at this
18 point.

19 THE COURT: Why?

20 MR. HOWARD: Because it affects their interest.
21 It's the -- it's modifying the operating agreement.
22 It's putting -- it's putting in place somebody that
23 they didn't choose to associate with.

24 THE COURT: Well, they chose to associate with
25 Mr. Roberson.

1 MR. HOWARD: Well, I understand that, Your
2 Honor, but there's ---

3 THE COURT: How old is this LLC?

4 MR. HOWARD: Excuse me?

5 THE COURT: How long has that LLC been in
6 existence? Do you know? Anybody know?

7 MR. LIGHTSEY: I don't know exactly, Your
8 Honor. It's -- it's been a while. They -- there
9 was a mortgage that it was paying on the property
10 that's all paid off now.

11 Since then, I think a substantial part of the
12 cash is just sitting on it. It did put some money
13 into capital improvements, put on a new roof. They
14 spent money on that. I think they repaved the
15 parking lot.

16 But -- but, essentially, it's -- it's sitting
17 on cash and -- and -- and it's been -- Mr. Roberson
18 does have a controlling interest. He -- he calls
19 the accountant and says, "I need a check for living
20 expenses." The accountant writes a check for
21 \$30,000, sends it to the receiver, and the
22 receiver's been signing it over until this most
23 recent -- until the appeal was completed, and then
24 he -- then he kept the cash that came in.

25 THE COURT: Well, who's on -- who are the other

1 members?

2 MR. HOWARD: Mr. Oshea might know that.

3 MR. OSHEA: If I might, Your Honor.

4 THE COURT: Yeah.

5 MR. OSHEA: In general, what this is was a
6 building that was a headquarters for a business that
7 Mr. Roberson previously owned. I believe it was
8 sold and incorporated some time in 2006 or -7.

9 At that point, they leased back the building to
10 the purchaser of the business on an escalating
11 lease. That lease right now, I believe, generates
12 62,500 a month. Mr. Roberson owns 48.167, some-odd
13 number, and there are seven other members. The next
14 closest is about 16 percent.

15 And I get the financials on the books of the
16 company. Mr. Roberson's equity interest right now
17 is approximately 1.6 million in the building, and
18 then the others are broken down. I can provide that
19 to the Court.

20 THE COURT: No. That's all right.

21 MR. OSHEA: So what happens is when -- and that
22 was the reason for my motion. I pay Mr. Roberson's
23 monthly bills. And when funds are needed, the way
24 it's normally worked is, I say, "Look, we're running
25 out of money here."

1 "Okay. I'll get in touch with the accountant."

2 Two days later, I get a check in the mail.

3 Deposit it into my receiver account, then pay the
4 bills, and that's how it goes. I do get the
5 financials on a quarterly basis. I don't think that
6 they're doing anything toward it.

7 My other concern is, that normally during the
8 year these payments are taken as loans against this
9 equity account, which has given me concern. And
10 I've talked to him and been approached by the IRS
11 because those, at the end of the year, really have
12 to become distributions.

13 And then that just piles on an additional tax
14 burden, and I think the IRS is about 100 something
15 thousand already. So he -- he does not have access
16 to that 62,000. He would be if the LLC chose to
17 distribute it.

18 THE COURT: Well, where is that -- where's that
19 money sitting? Do you know?

20 MR. OSHEA: The LLC has a bank account in North
21 Carolina. One of the partners -- actually, the next
22 largest at 16 something -- is an account that he
23 maintains the books and records. It -- it really
24 has no office, no facility. It just collects a rent
25 check every month which goes to North Carolina.

1 And that account has, I think, about 330,000 in
2 total right now. There is no mortgage on the
3 building. And the lease is due to be up, I believe,
4 in two years.

5 If it's not renegotiated, the LLC is carrying
6 the value of the business, less depreciation, about
7 8 million -- excuse me -- at about 3.3 million.

8 THE COURT: So where -- what building is this
9 just so I'll ---

10 MR. OSHEA: It's located up on Wade Hampton
11 Boulevard in Taylors, and it's a -- kind of an
12 office with mostly warehouse and shipping facility.

13 THE COURT: Okay. Yeah, anything?

14 MR. HOWARD: Well, Your Honor, you asked when
15 it was put in effect. It was 1999:

16 THE COURT: January 8th?

17 MR. HOWARD: I'm not sure if it was January. I
18 think it was June from what I can see.

19 THE COURT: Oh, June. No. It's in January.
20 The Secretary of State says January 8, 1999.

21 MR. HOWARD: Well, potentially. I'm just
22 looking at the operating agreement. Looks like it
23 was signed in June, so...

24 THE COURT: Well, those other people, it's a
25 corporate entity.

1 MR. HOWARD: Well, sure. It's going to --
2 potentially any order here is going to violate the
3 operating agreement.

4 THE COURT: How's that?

5 MR. HOWARD: Because -- because they get to --
6 if you're replacing Mr. Roberson with another --
7 with somebody else.

8 THE COURT: I'm not replacing him. He's a
9 receiver. He's controlling Mr. Roberson's interest
10 in that. He stands in his shoes.

11 MR. HOWARD: He's already receiving. I mean,
12 it's -- I don't know that there's a receiver mod ---

13 THE COURT: Well, you know, if he owns half of
14 that money and that's \$30,000 a month. It's going
15 to a bank account in North Carolina.

16 MR. HOWARD: Sure. It's a -- now, there are
17 managers of this entity too. And they've got to
18 make -- obviously, they're making decisions.

19 I -- you know, I don't represent TRG, so I'm
20 just ---

21 THE COURT: I know.

22 MR. HOWARD: --- I'm just suggesting to the
23 Court that there -- that this is an asset that has
24 to be maintained. There are decisions that they
25 make all the time about capital.

1 And -- and -- and so some of the money that's
2 coming in, there's obviously going to be a different
3 level of interest between what the receiver is
4 choosing to do and what the owners of this -- other
5 owners of this building might choose to do with the
6 capital that's coming in, and that puts things at
7 odds. And that's certainly an issue that they
8 would ---

9 THE COURT: Well, it would be at odds if
10 Mr. Roberson disagrees with what everybody else said
11 they were going to do.

12 MR. HOWARD: Well, sure. Mr. Roberson ---

13 THE COURT: Mr. Roberson, when he -- when he
14 lost this -- the conduct that led to this judgment,
15 he doesn't get to skate free from that.

16 MR. HOWARD: We completely understand, Your
17 Honor, and I'm not suggesting that he does. All I'm
18 suggesting is that I don't think the Court has the
19 authority to offset this operating agreement and
20 put ---

21 THE COURT: I have the authority to marshal the
22 assets of a -- of Mr. Roberson.

23 MR. HOWARD: I'm not -- I'm not suggesting ---

24 THE COURT: That's been confirmed by the
25 Supreme Court, right?

1 MR. LIGHTSEY: Yes, sir.

2 MR. HOWARD: I'm not stepping in your shoes,
3 Your Honor. I'm not trying to. I am not.

4 THE COURT: There's been plenty of times I'd
5 love to let you try it out for a while, or anybody
6 else for that matter.

7 Okay. I'm not sure. We've sort of jumped
8 around a little bit. We were talking about the
9 64,000.

10 MR. HOWARD: One of the issues is, they're
11 asking -- the point I was trying to make is that, as
12 it stands right now and what I was getting to is
13 that Mr. Roberson and Mrs. Roberson are not able to
14 even meet their fixed expenses based upon -- based
15 upon the Social Security received. And this is just
16 paying for -- paying for just -- just the basics of
17 keeping a roof over your head and the heat on. And
18 so from that ---

19 THE COURT: So that 30,000 a month comes in
20 handy?

21 MR. HOWARD: Well, he's not receiving 30,000 a
22 month.

23 THE COURT: Well, he could if he wanted to. I
24 haven't looked at the operating agreement.

25 MR. HOWARD: Well, no, I understand that. I'm

1 saying -- what I'm saying, Your Honor, is they're
2 asking -- and, number two, they're asking that he be
3 completely cut off, except for any social --
4 anything that's not -- and, number two, the receiver
5 will be directed to no longer obtain living expenses
6 to the defendants.

7 THE COURT: Well, let's talk about the -- the
8 island property. How's that owned?

9 MR. HOWARD: That's owned in a corporation, an
10 Anguilla corporation that's inside of an LLC here in
11 the US.

12 MR. LIGHTSEY: And that's -- that's part of the
13 receiver's motion as well, Your Honor.

14 THE COURT: I get that. Yeah. And that's
15 worth \$3 million?

16 MR. LIGHTSEY: That's -- I believe so.

17 THE COURT: And y'all have mediated all this?
18 Have y'all gotten together?

19 MR. HOWARD: Well, I -- I can't remember what
20 his -- do y'all have any idea? I can't remember
21 exactly what his interest in that is.

22 MR. LIGHTSEY: He's -- he has a third.

23 MR. HOWARD: He has other partners in it. And
24 there's -- and his partners have been paying some of
25 the expenses because he can't, so I don't know

1 exactly where his equity interest lies on that.

2 They've been trying to sell it. I mean, I know
3 that. They've been trying to sell it for -- since
4 day one. I mean, since -- just for at least six
5 years now. I mean, it's -- it's been -- there's
6 been an attempt to sell it and Mike may know more.

7 MR. OSHEA: I was going to say if I might, Your
8 Honor. When we're talking about a \$3 million value,
9 supposedly that's what the property is listed for
10 sale as in a complex down there that recently
11 changed ownership.

12 Mr. Roberson, it's my understanding, is
13 entitled to one-third of that. There are two other
14 partners. All along, they had for tax purposes
15 every year merged the rental income that came from
16 that property with their gateway property here in
17 Greenville for tax purposes. The IRS said to them
18 last year, they said, "No. From here forward, the
19 Anguilla corporation files separate from the other."

20 So depending on the value, Mr. Roberson has an
21 obligation to one of the partners of approximately
22 400,000, so one-third less 400,000.

23 The issue I have with it is, and I've had a
24 number of conversations with Brad Ruston over this
25 rental unit is, the company's worth, but not that

1 one, because it's actually an Anguilla corporation.
2 And what I've been told so far is that they're not
3 actually issuing stock, which is not all that
4 uncommon in offshore companies.

5 So from that standpoint, I was seeking to
6 clarify with the authorities down there if there's
7 stock to be issued, since there are two parties
8 here, that is a corporation to force us out of the
9 issuance to the plaintiff.

10 THE COURT: Okay. All right. Anything?

11 MR. HOWARD: Well, other than I don't want to
12 lose sight of the at least -- and I suggest this ---

13 THE COURT: Well, I don't want to make the guy
14 destitute, but he's sitting on a lot of assets. And
15 for him to claim that he's just -- can't buy
16 toothpaste is a little bit disingenuous.

17 MR. HOWARD: I'm not suggesting that, Your
18 Honor. If -- if -- but if this is put into effect,
19 the receiver be directed to not only pay living
20 expenses to the defendants, the only -- the only
21 exempt -- I mean, he's -- he's got exemptions
22 obviously under the law. His Social Security is it.
23 I mean, that's his only income that isn't subject --
24 basically, isn't subject to the receivership.

25 And so what I'm saying, Your Honor, is -- is --

1 is I'm asking for some equity here on this one so
2 that, you know, these ---

3 THE COURT: Well, that's what Mr. Ballard's
4 asking for.

5 MR. HOWARD: Well, I understand. I understand,
6 Your Honor.

7 THE COURT: Who's -- I -- I'm not picking at
8 you personally. This is not an easy thing.

9 MR. HOWARD: I understand. So, effectively, we
10 object to the motion. We disagree with it. And
11 I'll just -- just for purposes of the record, I
12 specifically object to their request on two. I
13 object to the receiver's fees and costs being paid
14 directly to the assets of the defendants' five.

15 And I don't know exactly what six is. As
16 necessary, the Court granted two additional powers
17 which may be necessary between these. I don't know
18 what they're asking for in that, so I think that's
19 too broad, too open-ended a request to be granted to
20 defendant to modify the order.

21 And so those are -- from their requests, those
22 are my objections and just noting it for the record.

23 THE COURT: Well, we're talking about -- now
24 about this \$64,000.

25 And how much money are you writing to them a

1 month, Mr. Oshea? Do you know? What's the ---

2 MR. OSHEA: Your Honor, it -- it varied. On
3 average, 5,000 a month, and that includes \$2,042
4 that he receives. In other words, I have him deduct
5 what he receives from Social Security from the
6 amount of bills that he requests to be paid. The
7 bulk of that is \$2750 a month to the mortgage on the
8 house and \$350 a month to HOA fees.

9 THE COURT: What's -- do you know the value of
10 the house?

11 MR. OSHEA: At this point, Your Honor, I've
12 been in touch with Grand South Bank, and it's
13 "underwater" approximately, according to them, 150-,
14 \$160,000.

15 I had an incident -- a couple of times, the
16 bank wanted the mortgage to be caught up, which I
17 did in the beginning. I think it was about 26,000.

18 Then a year ago October, I believe it was
19 October, I didn't realize there was a five-year
20 mortgage. It was due to be renewed. They said the
21 regulators require a pay down, so I paid down
22 approximately 11,000 on the -- the outstanding
23 balance.

24 But they're exposed. There are two other units
25 adjacent to Mr. Roberson's that he built up there

1 with a couple of partners. One of them just sold
2 where the bank lost about 147,000 deficiency on that
3 one.

4 So the bank's position has been, as long as you
5 continue to pay us, he continues to stay there. So
6 that is his -- his homestead, and it is getting paid
7 every month.

8 THE COURT: And what's the monthly amount that
9 you collect off of that local property?

10 MR. OSHEA: Oh, the -- the other units?

11 THE COURT: How -- where do we come up with the
12 \$64,000 balance? Where does that money come from?

13 MR. OSHEA: Oh, that comes from TRG. That goes
14 back to when I tell Mr. Roberson he's getting low.

15 And the reason there's that much in there at
16 the moment is at one point Mr. Howard had asked that
17 I arrange to pay some current legal fees, and I felt
18 that that was outside the purview of what I was
19 authorized, but Tim agreed to go and -- and take
20 some of that money. And I asked him before -- prior
21 by TRG, which they did do. And so that's included
22 in the amount, Your Honor.

23 THE COURT: So if I give you the 64,000, he
24 goes under -- the house goes under? He loses the
25 house? What...

1 MR. OSHEA: It would be my understanding, Your
2 Honor, that as Mr. Howard pointed out, his wife's
3 Social Security is approximately 2300,
4 Mr. Roberson's approximately 2,040 some-odd, so a
5 little over 4,000 between the two of them. And
6 that, to the best of my knowledge, is their only
7 income.

8 THE COURT: Mr. Workman?

9 MR. WORKMAN: Again, thanks, Your Honor.

10 I would point out as a matter of information to
11 the Court, it would be our view that in spending too
12 much money on this house, it's "underwater." It's
13 in foreclosure. And, in fact, the equity court in
14 Oconee County has already had a hearing on the
15 foreclosure of our judgment, authorizing of the sale
16 of the house, a public sale. That was all held in
17 abeyance until the appeals were exhausted. They've
18 been exhausted.

19 So the next step is for us to move for the sale
20 of that property, which we intend to do. If we
21 don't do it, Grand South Bank is going to do it.
22 They've informed the receiver of that, and so
23 they're waiting for us to take action. Otherwise,
24 they're going to bring the action to foreclose
25 themselves.

1 So I think the receiver's trouble that he's
2 sending all this money to Mr. Roberson for living
3 expenses, but it's going to a house that he's not
4 going to have much longer anyway. He needs to find
5 another ---

6 THE COURT: What would the time frame be? What
7 would the time frame be on that sale?

8 MR. WORKMAN: I'd say three -- three months.

9 THE COURT: Okay.

10 MR. WORKMAN: Thank you, Your Honor.

11 THE COURT: So -- and if you quit paying now,
12 what difference would it make?

13 MR. WORKMAN: I don't think it would make any
14 difference, Your Honor.

15 THE COURT: What difference would it make,
16 Mr. Howard? It's going to be sold anyway.

17 MR. HOWARD: I wasn't aware of the standing --
18 what the order was on that.

19 THE COURT: Yeah, I mean, that's right. Okay.
20 Well, I'm going to grant that motion.

21 All right. Are we...

22 MR. HOWARD: You are granting the total? We're
23 not going to have any ability to maintain any level
24 of life beyond what Social Security allows?

25 THE COURT: I'm -- don't try to put that on me.

1 It wasn't my conduct that initiated this lawsuit and
2 was it found that your client's conduct, among
3 others, is what caused these problems. So I -- you
4 know, I'm not going to carry that in my soul on
5 his ---

6 MR. HOWARD: I was just seeking clarification,
7 Your Honor.

8 THE COURT: Yeah, well, we're talking about the
9 64,000. What else was in that original? I jumped
10 around. The original -- the first motion was modify
11 the receiverships.

12 MR. LIGHTSEY: There's the -- the motion
13 concerning the allocation of the judgment in light
14 of Mr. Thoennes III's bankruptcy.

15 THE COURT: Before we do that, what -- what
16 is ---

17 MR. LIGHTSEY: The receiver's motion to
18 transfer the LLC interest into his possession.
19 That's just for Mr. Roberson, and then there's
20 Mr. Roberson's Rule 60(B)(5) motion.

21 THE COURT: Okay. So I -- I'm going to grant
22 the receiver's motion, so he's going to stand in the
23 shoes of Mr. Roberson with respect to the LLC.

24 And if the other members want to fight it out,
25 they -- they certainly would have standing. Come

1 back up here and spend more money.

2 All right. Does that take care --

3 Mr. Lightsey, you had listed four of them. That --
4 that takes care of one and three?

5 MR. LIGHTSEY: Yes, sir.

6 THE COURT: Okay. All right. Conduct
7 attributable to -- yeah, okay. All right.
8 Mr. Wilson, you're rising to speak.

9 MR. WILSON: Yes, thank you, Your Honor. May
10 it please the Court?

11 We did file a motion to determine the portion
12 of the judgment amount against Rick Thoennes III
13 that is attributable post-petition conduct. So it's
14 kind of a wordy phrase I know, but the situation is
15 that the judgment that you entered in October 2013
16 was against all three defendants, including Mr. Rick
17 Thoennes III.

18 And we are asking this Court to determine that
19 the entirety of that judgment against Mr. Thoennes
20 III, who's entered in October 2013, is we can
21 execute against it because it's attributable to his
22 oppression that it took place and occurred after he
23 was discharged from bankruptcy.

24 So let me begin just with a very brief
25 chronology. This Court did -- there was a trial

1 followed by an order in May 2010 where this Court
2 ordered all three defendants to buyout Mr. Ballard.

3 Then after that, while that was on appeal, on
4 December 2, 2011, Mr. Thoennes III filed his
5 bankruptcy petition and he was granted a discharge.

6 After that, two years later almost in August of
7 2013, this Court held a hearing to determine the
8 damages from the oppression and determined the
9 buyout amount. That was a valuation hearing in
10 August of 2013.

11 Following that hearing, this Court issued a
12 judgment dated October 3, 2013, for three -- it's
13 now reduced to 3.1 million plus interest.

14 That judgment -- that's a money judgment that
15 we have. That's what the receiver is collecting on.
16 That judgment was entered almost two years after
17 Mr. Thoennes III's bankruptcy discharge.

18 And so when we were attempting to collect on
19 that judgment, we came before this Court. When we
20 originally asked for Mr. Oshea to be appointed and
21 we originally asked for that order for a charging
22 order, Mr. Thoennes III's counsel, Wally, told us
23 that we needed to -- to agree not to pursue that
24 against Mr. Thoennes III because of the discharge.

25 We disagree. We believe that that judgment was

1 fully valid. We could pursue it, but because of the
2 automatic statement, we voluntarily agreed not to do
3 that.

4 And when this Court issued its order appointing
5 Mr. Oshea in April of 2014, it specifically put a
6 footnote on the first page that all the findings of
7 that order apply to Rick Thoennes III, but that the
8 execution, it would not apply as far as executing
9 against him because we had agreed to hold that in
10 abeyance. So that was all put on hold while we
11 would go into bankruptcy court and ask for
12 clarification.

13 So we then filed a proceeding with the
14 bankruptcy court asking the bankruptcy court to rule
15 that its discharge did not apply to that judgment
16 that you entered in October of 2013 for \$3-plus
17 million.

18 The bankruptcy court had a hearing. And at
19 that point, Rick Thoennes III asked the bankruptcy
20 court to discharge your judgment. And we asked the
21 bankruptcy court to rule that we could pursue it.
22 And the bankruptcy court refused to discharge it,
23 Judge.

24 They -- the bankruptcy court specifically ruled
25 that any portion of that October 2013 judgment that

1 is attributable to oppression by Mr. Thoennes III
2 occurring on or after the discharge of December 2,
3 2011, is not discharged.

4 So the bankruptcy court has made that ruling,
5 that any part of your judgment that was based upon
6 oppression after the discharge is not discharged and
7 we are free to pursue.

8 The court also ruled that you are the one in
9 the best position to make that determination of how
10 much oppression was based post-discharge.

11 So that is why we have filed this motion.
12 We're asking you to make that determination. And I
13 actually have two methods that I would like to
14 propose for you to make that determination.

15 The first method is that if you consider the --
16 the valuation hearing that you had in Aug -- August
17 2013, that was to set a value on this company, and
18 that value was set at 7-plus million and
19 Mr. Thoennes III as well as the other two defendants
20 ordered to pay -- we got a judgement for half that
21 amount. That's how much they had to pay over.

22 That judgment amount would not vary based on
23 the amount of oppression, based on the length of
24 oppression. The oppression could've occurred one a
25 day. It could've occurred a thousand days. The

1 valuation is the same, 7 million, buyout
2 three-and-a-half million.

3 For that reason, the fact that the oppression
4 of Mr. Thoennes continued all the way up to that
5 hearing in August 2013, it fully supports the
6 judgment amount, three-and-a-half million. And so
7 under that reasoning, the full judgment amount is
8 based on oppression that occurred after the
9 discharge.

10 And this Court has specifically ruled that the
11 oppression at issue continued all the way to that
12 valuation hearing in August 2013. So the fact that
13 some oppression also existed prior to the discharge
14 is irrelevant. Doesn't matter because he continued
15 to oppress.

16 And if we say, well, the whole judgement's
17 discharged, the bankruptcy court refused to order
18 that. That would -- because essentially that's a
19 license for him to continue his oppression
20 indefinitely, but the bankruptcy court ruled that to
21 the extent he continue his oppression after the
22 December 2, 2011, discharge, then that judgment is
23 valid. And we would submit that the full amount of
24 the judgment is valid.

25 The only alternative method that I would

1 propose this Court consider, I -- I would -- the
2 first one I kind of see is joint and several
3 liability. It's fully liable for all oppression
4 that happened after discharge.

5 The other method I would submit, I would
6 consider more of a time on the risk theory like we
7 see in insurance law. So if we look at the entire
8 period of oppression and then apportion a
9 percentage, well how much of that oppression
10 occurred before discharge and how much of that
11 oppression occurred after discharge?

12 Then that amount that occurred after his
13 discharge continued after that point all the way up
14 to the valuation hearing. That would be the amount
15 of the judgment that we -- that can be enforced
16 against him and it still stands.

17 The way to do that is, I looked at your
18 original May 2010 order where you ruled that there
19 had to be a buyout, and where you found that there
20 was oppression. And the first date that any
21 oppress -- oppressive conduct occurred was October
22 28, 2007.

23 If you read your May 2010 order, it says in
24 paragraph 22 that there was an e-mail on that date
25 by Mr. Thoennes III about getting Mr. Ballard out of

1 the deal. So if we say looking at that finding of
2 fact in the order, the oppression would've started
3 on October 28, 2007.

4 You also ruled that the oppression continued
5 all the way through the valuation hearing on Aug --
6 in August 2013. That ruling specifically made two
7 orders. One was an order appointing receiver; the
8 other was the charging order.

9 So the number of days from October 28, 2007,
10 when the oppression began, to August 6, 2013, when
11 the valuation -- the valuation hearing occurred is
12 2,110 days total period.

13 Now, if we start at the discharge which is
14 December 2, 2011, to that valuation hearing on
15 August 6, 2013, that's 614 days of oppression after
16 the discharge. So dividing 614 into 2,110 which is
17 approximately 29 percent of the judgment which has
18 been reduced to 3.125 million on appeal.

19 So 614 over 2 -- 2110 times 3.125 million
20 equals \$909,360. So if you just look at that
21 percentage apportionment, that would be the amount
22 of the judgment that we can enforce against Rick
23 Thoennes III.

24 We would ask the Court to rule that we can
25 enforce the entire judgment against him based on my

1 first theory, alternative ---

2 THE COURT: If I go with your second theory,
3 does that not then reduce the amount that you can
4 enforce against the other two?

5 MR. WILSON: No, Your Honor. The others did
6 not -- they did not file for bankruptcy, so they are
7 not seeking protection. But because he filed, the
8 bankruptcy judge ---

9 THE COURT: Well, no. What I'm saying is,
10 let's say I go, "Okay. 900,000 against this
11 defendant." Doesn't that impact what the other two
12 owe since it's joint and several liability?

13 MR. WILSON: I would say, Your Honor, that
14 we -- the joint and several liability, they are
15 jointly and severally liable for your judgment. So
16 as soon as we can collect from one, it would reduce
17 the amount that anybody else would have to pay.

18 If you divide that whole judgement by three and
19 they all paid equal shares, it would be, you know, a
20 little bit over 1 million each.

21 I'm not sure if I follow -- if I understand
22 your question correctly, so I apologize if I don't.

23 THE COURT: Well, I would think that Mr. Howard
24 would support your formula, right?

25 MR. FAYSSOUX: No.

1 THE COURT: Would reduce the amount that your
2 client would owe.

3 MR. HOWARD: Your Honor, I -- I don't have a
4 comment on that.

5 MR. WILSON: Your Honor ---

6 THE COURT: Am I wrong about that? If I order
7 1 million against one defendant, the other two then
8 are on the hook for 2 million, two-and-a-half,
9 whatever the fine numbers are.

10 MR. WILSON: Your Honor, as I understand joint
11 and several liability, we can pursue any one of
12 those defendants for the full amount of the
13 judgment -- the judgement against them because
14 they're jointly and severally liable.

15 If one defendant ended up paying, let's say the
16 full judgment, then he could turn around and seek
17 for the other two to contribute to that. But the
18 whole theory as I understand it ---

19 THE COURT: But if I make this ruling, then the
20 other two -- and then he can't collect more than a
21 million from the other two, right? You're asking me
22 to cut this pie into different pieces for each of
23 them to eat.

24 MR. WILSON: Well, I think what I'm asking Your
25 Honor is just for you to rule how much of the

1 judgment applies to post-discharge oppression for
2 Mr. Thoennes III and that that's the amount, but
3 he's been discharged the amount before that.

4 The other two don't have that. They
5 haven't asked -- they have not gone to a bankruptcy
6 court and sought a discharge.

7 THE COURT: Yeah, and they -- the bankruptcy
8 judge punted it.

9 MR. WILSON: She -- she did punt it in a way in
10 the sense that she felt that this Court was in a
11 better position to make this determination, and so
12 she dismissed without prejudice.

13 THE COURT: But our law is joint and several
14 liability.

15 MR. WILSON: I agree, Your Honor.

16 MR. LIGHTSEY: If I may, Your Honor, excuse me.

17 MR. WILSON: Go ahead.

18 MR. LIGHTSEY: The judgement against
19 Mr. Thoennes III would still be the full amount. It
20 would still be the ---

21 MR. WILSON: Right.

22 MR. LIGHTSEY: --- 3.1 million. The issue is,
23 how much of that can we collect in light of the
24 bankruptcy discharge?

25 MR. WILSON: Right.

1 MR. LIGHTSEY: So it doesn't -- whichever, of
2 course, we would -- we would like you to say the
3 whole amount if you did apportion it up on a time on
4 the risk kind of theory. You're broadening --
5 you're not changing the amount of the judgment
6 against Mr. Thoennes III or the others. You're just
7 saying, other than that, the -- the bankruptcy
8 discharge discharges his liability.

9 THE COURT: Well, actually, I would be
10 because -- you're not suggesting that if I
11 apportioned it for him to pay a third of it, that
12 against the other two you could still collect the
13 full amount?

14 MR. LIGHTSEY: Not if we collected that from
15 him.

16 MR. WILSON: Right.

17 MR. LIGHTSEY: Whatever we collected from
18 him ---

19 THE COURT: So it benefits the other two if
20 I ---

21 MR. LIGHTSEY: Correct. But it doesn't affect
22 their -- if we were not able to collect anything
23 from Mr. Thoennes III, we should still be able to
24 collect the entire amount from Mr. Roberson.

25 THE COURT: Right.

1 MR. LIGHTSEY: But, you know, you're right.
2 Whatever we actually collect from Mr. Thoennes III
3 would offset what the others owe.

4 MR. WILSON: Right. Right.

5 THE COURT: And the same is true of the other
6 two? For instance, if the receiver sold the island,
7 then -- and he got an exorbitant amount for it, the
8 other two would benefit in the reduction of the
9 judgment amount.

10 MR. LIGHTSEY: That's right. And Mr. Roberson
11 could seek contributions from them. But as far as
12 our ability to collect from them, we -- we couldn't
13 double dip. We couldn't recover more than double.

14 But, again, that doesn't -- that doesn't affect
15 the size of the judgment. It's just the amount that
16 we would be entitled to collect from Mr. Thoennes
17 III. If we didn't get any from him or we only got a
18 small amount, the other two could still be on hook
19 for the ---

20 THE COURT: Well, let's say I apportioned it
21 and he paid it, does that relieve him from the
22 judgment?

23 MR. LIGHTSEY: He would be, yes. But combine
24 the fact of your apportionment plus the bankruptcy
25 discharge, he would then have no further liability

1 if we got that from him.

2 THE COURT: Okay. Would you agree with that,
3 Mr. Fayssoux?

4 MR. FAYSSOUX: Only that last statement, I
5 would, Your Honor. But I can say there's
6 considerable heartburn. We don't ever have to ---

7 THE COURT: How long you -- can we -- let's
8 just take about a three-minute break. Is that
9 agreeable with everybody?

10 MR. FAYSSOUX: Yes, sir.

11 MR. LIGHTSEY: Yes, sir.

12 THE COURT: All right.

13 (From 11:30 to 11:34 a.m., a recess was taken.)

14 THE COURT: All right. Let's proceed.

15 MR. FAYSSOUX: Please the Court? Thank you,
16 Your Honor.

17 Your Honor, for -- in case you need it, I'm
18 just going to pass up a brief binder that references
19 two of your previous orders and the bankruptcy
20 judge's order so we can be crystal clear on what she
21 actually said.

22 Your Honor, what -- what is strangely missing
23 from those tortured proposals of allocating the
24 judgement and how you're going to put some of this
25 liability on Mr. Thoennes is a single example of

1 this oppressive misconduct that they say you found.

2 The only thing they talked about was the e-mail
3 from 2007. And the problem is, when I -- when I
4 show you where this is coming from, I think -- I
5 think it's pretty frustrating.

6 Your Honor, here is what happened. Let's go
7 over that chronology of facts again. In 2010, you
8 have the finding of liability, May of 2010, where
9 you essentially said, and the Supreme Court
10 affirmed, there was a freezing out activity by my
11 client, Mr. Thoennes III, Sr., and Mr. Ballard. All
12 right. That's the basis of liability. That's the
13 only merits hearing you had on liability and conduct
14 and what they did.

15 Then you decided that there was going to be a
16 forced buyout of Mr. Ballard's shares. You were
17 going to hold a valuation hearing, according to the
18 record, almost immediately following that finding of
19 liability, but they appealed.

20 And so it went up to the Supreme Court and it
21 was sent back down strictly for a valuation hearing
22 then, which you ultimately had in 2013.

23 Now, Your Honor, in your finding of
24 liability -- excuse me -- so while it's up on the
25 Supreme Court, my client -- not just related to this

1 case. It certainly affected this case, but there
2 were millions of dollars of judgements from the
3 residential building disaster that he was a part of
4 that forced him into bankruptcy.

5 He filed bankruptcy in 2011, almost over a year
6 after your judgment in 2010. And I think it's
7 affirmed by the bankruptcy court in the first of
8 2012. And it discharges all debts. No question
9 about it, it discharges all debts that arose prior
10 to December of 2011, which of course would be this
11 case.

12 Your Honor, it's now sent back from the Supreme
13 Court for a remand specifically on valuation. You
14 had two hearings on that, June of 2013. And one of
15 the court appointed, I think, economists or
16 appraisers had not had an opportunity to finish the
17 report, so you had a brief hearing. No evidence was
18 put in, and then they basically -- you reconvened in
19 August of 2013 strictly for a valuation.

20 If I look at the first tab of your order on Tab
21 No. 1, it clearly says, "This matter is before the
22 Court to determine fair value of the plaintiff's
23 ownership." That's it. It's the only reason you're
24 there in 2013.

25 At that hearing, my client, Rick Thoennes III,

1 is never called to testify by either the plaintiffs
2 or the defendant, offers no testimony whatsoever.
3 Even more than that, his name is not mentioned one
4 single time in the entire transcript. I read it
5 last night. Y'all never talked about Rick Thoennes
6 III.

7 Moreover, you never talked at all about conduct
8 that was continuing and unabated. This new language
9 that's now been plugged in and they're seeking to
10 get around the bankruptcy ruling. In fact, you
11 talked about valuation of the shares, the 50 percent
12 ownership that you allocated to Mr. Ballard.

13 And so the question is, how in the world are we
14 here? How in the world when we've got an order
15 that's so clear that says you're there simply to
16 value the case, how are we now getting around the
17 bankruptcy order and why is Judge Burris so confused
18 about why there's post-bankruptcy conduct?

19 It's because in 2014, there's a sentence
20 inserted in the order appointing receiver. It has
21 nothing to do with continuing conduct.

22 If you look, Your Honor, on tab 2, page -- page
23 3 of tab 2, a sentence is inserted after the
24 valuation, which is why he's there that says, "At
25 the valuation hearing, plaintiff presented

1 undisputed evidence that the conducts of the
2 defendants' previously held shareholder oppression
3 and is continued unchanged until the time of that
4 hearing."

5 Judge, you never found that. You never even
6 addressed that. There isn't a shred of evidence in
7 that transcript of that record. There's no legal
8 order itself in that hearing. It never mentions
9 unabated or additional conduct. And the reason they
10 don't cite the one is there is none.

11 My client hasn't had the first thing to do with
12 Warpath since 2010. He certainly hasn't had the
13 first thing to do with Warpath since 2011. Not an
14 e-mail, not any phone communication, not a
15 negotiation.

16 His only involvement with Warpath since 2010
17 has been to respond to a barrage of schemists,
18 post-judgment discovery, and we were trying to find
19 out whether or not he was hiding interest of his
20 father, secreting money for his father. That's the
21 only involvement he's ever had in Warpath.

22 And so what's happened is, they've inserted a
23 sentence on an order referencing a previous order
24 that somehow magically has you making the finding of
25 continuing misconduct. And that sentence in the

1 order appointing the receiver is the one that they
2 took up to the bankruptcy court.

3 So the bankruptcy judge, you've got her order
4 there. I think it's number five. Your Honor, well
5 they -- they try to -- I guess they tried to get
6 around this bankruptcy ---

7 THE COURT: No. It's not number five.

8 MR. FAYSSOUX: It should be number five, Judge.

9 THE COURT: That's the decision.

10 MR. FAYSSOUX: That's the decision of the
11 bankruptcy judge.

12 THE COURT: Well -- oh, okay. I gotcha.
13 Reported decision.

14 MR. FAYSSOUX: Yes, sir. And if you'll turn
15 all the way, she basically granted summary judgement
16 on all the causes of action that they said to try to
17 get around the debt in subject. Just look at the
18 last page.

19 And she's basically referencing the fact
20 because you found there was undisputed evidence of
21 continuing misconduct by Mr. Thoennes, then you then
22 would have to make a determination of what -- what
23 portion of misconduct continued after the filing of
24 bankruptcy.

25 It's a complete farce, Judge. There was never

1 a hearing on that. There was no evidence of that.
2 There was never a finding of it. It was either
3 mistakenly or artfully put in a different order that
4 had nothing to do with that, and now has come on the
5 entire basis for challenging and basically
6 discarding the whole purpose of the bankruptcy.

7 You know, Your Honor, my client, he -- he took
8 the hit. He filed bankruptcy. He lost everything.
9 He lost his house. He lost all his assets and he
10 started over. And no one's cared about Rick
11 Thoennes III since he filed bankruptcy until he
12 started doing better with his business, which is
13 exactly what bankruptcy is for and what he's
14 supposed to do.

15 He's worked tirelessly since 2012 to
16 re-establish his reputation, re-establish his name.
17 He now has a company called the Rembrey. He's
18 building houses again and he's doing well.

19 And so now they want to take one sentence that
20 never should've been in there in the first place,
21 that there was no evidentiary basis for whatsoever
22 and they want to claw him back in and just disregard
23 the bankruptcy rules altogether.

24 Judge, it -- it is crystal clear on this. We
25 don't need to go to allocations or some sort of

1 tortured valuation process to get around joint and
2 several liability. My client's completely
3 discharged from this debt.

4 They -- not only is there no evidence in the
5 record, right now they can't make a single thing he
6 has done with Warpath, to Warpath, against Warpath
7 since 2007. Certainly, not since 2000 -- excuse
8 me -- 2010, your order, and certainly not since the
9 2011 discharge. He's out. So -- so this is an easy
10 one, Judge. We ask that you deny the motion.

11 THE COURT: Easy?

12 MR. FAYSSOUX: Yes, sir, it is. It's crystal
13 clear, Your Honor.

14 THE COURT: Why didn't he file a third-party
15 action against his codefendants?

16 MR. FAYSSOUX: Why -- why would he file a
17 third-party action against his codefendants?

18 THE COURT: You say he didn't do anything from
19 2007, that he was not part of the ongoing ---

20 MR. FAYSSOUX: I misspoke. I said -- I was
21 saying 2000 -- your order is 2010, Judge.

22 THE COURT: Yeah.

23 MR. FAYSSOUX: Right.

24 THE COURT: But you said his only conduct was
25 in 2007.

1 MR. FAYSSOUX: And I'm sorry. I corrected
2 myself. I misspoke. I meant to say 2010. Because
3 that's the -- obviously, you judged what happened
4 between 2007 and 2010, what you deemed he had
5 conduct along with his partners and around this
6 oppression. You had a finding, the judgment and the
7 ruling on liability. The hearing on the merits was
8 in 2010.

9 He's filing bankruptcy over a year later. It
10 was just a valuation for the liability that you
11 found in 2010. It had nothing to do with anything
12 that might've happened in 2011 or 2012 or going
13 forward, nothing.

14 And -- and -- and what's worse is, even if they
15 wanted to try to do that, they didn't put any
16 evidence in that and you weren't even asked to make
17 a finding of that. It was a sentence plugged in an
18 order six months after that hearing on a different
19 order that just kind of -- kind of relate back and
20 gave a convenient continuing misconduct finding.

21 Not only did you not find it, it never
22 happened. But it's had a pretty significant
23 implications going forward, and that's why we've
24 been on the periphery until now.

25 THE COURT: All right.

1 MR. LIGHTSEY: Your Honor, I need to correct a
2 misstatement Mr. Fayssoux has made and I don't think
3 it was intentional. He wasn't at the hearing. I
4 appreciate that he says he read the transcript.

5 We did put up evidence at the -- at the
6 valuation hearing in 2013 through Mr. Ballard's
7 testimony on the stand that all of the things that
8 the defendants together did, the controlling parties
9 of this company that was held to be oppression by
10 you and affirmed by the Supreme Court, that that had
11 continued up until the time of that -- that hearing.
12 So there is evidence in that transcript.

13 I don't think we named Mr. Thoennes personally,
14 but it was all three of them, that all of that --
15 everything that was -- you found to constitute
16 oppression that the Supreme Court affirmed had
17 continued to that day in 2013. So there is evidence
18 of that. It's completely wrong to say there's no
19 evidence of that.

20 It was all of the things that you talked about,
21 the fact that he hadn't been given any information
22 about the company, no financial information, he was,
23 you know, supposedly elected to the board of
24 directors. They didn't have any directors'
25 meetings, they didn't have any shareholders'

1 meetings. It was all of that. Every -- all of
2 that, and the effect of squeezing him out and that
3 was the oppression and that continued up to the time
4 of the hearing, and that is in the record.

5 MR. FAYSSOUX: Your Honor, he filed bankruptcy
6 in December of 2011. Any benefit he would've had,
7 any form of shareholder in this corporation is gone.
8 He's just completely disgorged of any interest, of
9 any benefit whatsoever in 2011. So how can he now
10 be penalized for something he doesn't even have?

11 They just give that broad-squeaking
12 generalization, "Well, they didn't do what they were
13 supposed to do, so it was continuing misconduct."
14 He -- he had nothing to do with Warpath from 2011
15 on. They -- they can't put a single piece of ---

16 THE COURT: What do you mean he had nothing to
17 do with it?

18 MR. FAYSSOUX: Judge, he was out. For one,
19 number one, he didn't have any shares. He didn't
20 have the shares since 2010.

21 THE COURT: Who had shares?

22 MR. LIGHTSEY: Your Honor, the shares were --
23 the shares were not -- the shares were not sold in
24 the bankruptcy.

25 MR. FAYSSOUX: So those --

1 MR. LIGHTSEY: They were not sold. He's
2 continues to have them, and he continued to be an
3 officer.

4 MR. FAYSSOUX: Right. Your Honor, I invite
5 them to tell just one thing, one act he did, one act
6 he did on behalf of Warpath since 2011, anything,
7 anything. And they can't point to anything.

8 Instead, it's just this one sentence concerning
9 the order that says you made a finding that you
10 never made. And I -- and I respectfully disagree
11 with Mr. Lightsey on that. I've read that
12 transcript. There's no evidence in there talking
13 about misconduct of Rick Thoennes at all.

14 THE COURT: Well, it's the defendants.

15 MR. FAYSSOUX: Even ---

16 THE COURT: It's one entity.

17 MR. FAYSSOUX: But, Judge, even -- okay.
18 Let's -- let's give him credit and say any of the
19 defendants were found to be doing things that
20 amounted to misconduct from 2011 through 2012
21 because that's all you can look at. You're looking
22 at the time you did the valuation order to the time
23 of bankruptcy.

24 That's what the judge is saying, that somehow
25 he had engaged in additional misconduct after the

1 bankruptcy discharge. There's no question
2 everything before it's gone, so he would've had to
3 have done something else after 2011 up until your
4 order of 2013 that amounted to oppression or
5 misconduct or something to that nature.

6 Nobody can identify a single thing he's done
7 because he had nothing to do with the company at
8 that time, absolutely nothing. And -- and the
9 problem is, Judge ---

10 THE COURT: Except that he owned it.

11 MR. FAYSSOUX: Well, Judge, even if you look in
12 the record, it was a valuation hearing. Y'all
13 weren't looking at conduct. That had already been
14 decided. You weren't looking at continuous conduct.

15 I'm sure Mr. Wallace made that -- excuse me --
16 Wallace made that in opening statement that the
17 conduct was continuing. Show me some evidence in
18 that record. Or more importantly, even if there was
19 some sort of evidence in that record, which there's
20 not, show me where you made a finding in the 2013
21 order that that existed. You didn't.

22 It's only in 2014 when they plug that sentence
23 back in there and basically intimated that maybe you
24 did have that finding in the order, even though it's
25 not there and it's not in the transcript. He's

1 discharged, Your Honor, absolutely.

2 THE COURT: Well, I say think if -- if he was
3 discharged absolutely, the Federal bankruptcy court
4 would've said that.

5 MR. FAYSSOUX: Because she looked at the one
6 order that they -- was part of the evidence they
7 presented, which was your order appointing
8 Mr. Oshea. And it's almost like an afterthought.
9 You're there. You find a valuation hearing.
10 Appointing Mr. Oshea has nothing to do with
11 continuing misconduct.

12 There's one sentence plugged in there that
13 says, "Oh, yeah, and at that last hearing, I found
14 that conduct was continuing," and that's what she
15 looked at.

16 And so she said, "Okay. Well, since you made
17 that finding, then you're in the best position to
18 decide what portion of this \$3 million judgement is
19 attributable to whatever my client did between 2 --
20 the end of 2011, basically 2012, and several months
21 into 2013, which is nothing.

22 Even if you -- even if you had a complete
23 merits hearing on it, Your Honor, and we started
24 back right now, that's essentially what we have to
25 do, is you have to have a new trial on what type of

1 conduct my client ---

2 THE COURT: He owned it.

3 MR. FAYSSOUX: Sir?

4 THE COURT: He owned it. He owned the shares
5 in the company.

6 MR. FAYSSOUX: Well, he ---

7 THE COURT: Look, I don't mean to imply
8 anything other than just using old adage, but when
9 you lie down with dogs, you get up with fleas. You
10 can't just come back later and say, "No. I didn't
11 have it."

12 MR. FAYSSOUX: Sure, Your Honor. Okay. I
13 agree with that. If you're guilty because you own
14 it, then you're guilty because you own it.

15 But what is the new act since the discharge?
16 Because there's no question under the bankruptcy,
17 that liability, that act arose, or whatever happened
18 initially that caused you to rule against him at the
19 initial 2010 hearing.

20 So it's not some sort of continuing thing just
21 because you found he oppressed in 2010. He
22 automatically does it through 2013. He has to have
23 some additional act. That's what the bankruptcy law
24 and the bankruptcy judge is saying, that if you
25 really did find that, then you have to determine

1 what those additional new acts were. He didn't do
2 anything new.

3 THE COURT: She's ordering me to do something
4 like that?

5 MR. FAYSSOUX: Yes, sir.

6 THE COURT: She has the jurisdiction and the
7 authority to order me to do that?

8 MR. FAYSSOUX: I don't know if she does, Your
9 Honor. I don't think she has the jurisdiction
10 certainly not to make you make an additional finding
11 or a finding you never made in the first place.

12 It's a mess. And it would've been discharged
13 by way of summary judgment at the bankruptcy court
14 level. There's no question about it. You can read
15 the order. It would've totally been discharged at
16 the bankruptcy level, except for this one sentence
17 that's pulled out of the order appointing receiver.
18 It doesn't have anything to do with it, and it's
19 pulled out and that's the basis.

20 THE COURT: She -- so that's her understanding?

21 MR. FAYSSOUX: Her understanding of what she
22 thought you found. She said that you litigated --
23 let me find the quote in here, Your Honor, so that
24 I'm not speaking out of turn.

25 It says, "The Court noted there was undisputed

1 evidence of conduct the defendants previously held
2 to conduct share -- to constitute shareholder
3 oppression that has continued and unchanged and
4 unabated until the time of the hearing."

5 All right. She's citing the receiver order
6 there, not the order of valuation.

7 Okay. "Therefore, the conduct resulting in
8 final judgment was not abated post-petition."

9 She's quoting you. And then she goes on to say
10 that this can't be answered through summary
11 judgment, that it's best to be done at the state
12 court level. You heard the evidence and apply the
13 law resulting in the trial court order. You're in a
14 better position to make this determination in an
15 efficient manner, and that's the only appropriate
16 form that may be appropriate.

17 THE COURT: But, you know ---

18 MR. FAYSSOUX: I'm sorry.

19 THE COURT: No. Go ahead.

20 MR. FAYSSOUX: I mean, even if we were to reset
21 and go back to that date, still invite them to tell
22 me something that he has done, but he owned it. But
23 that act of owning -- the act of owning it, if that
24 amounted to oppression just owning it and being with
25 the wrong people, if that amounted to oppression,

1 then there's no question that that act is discharged
2 because that act occurred before and arose before
3 2011. It's discharged.

4 THE COURT: Which is why I asked you why didn't
5 he take an affirmative action to distance himself
6 from the defendants who you apparently are saying
7 are the ones at fault? Why didn't he take -- why
8 didn't he file a third-party action against the
9 other defendants, some other action to get himself
10 distanced from this LLC?

11 MR. FAYSSOUX: Your Honor, I think -- honestly,
12 I don't know what else he thought he could do
13 because he was no longer actively participating at
14 all in the LLC.

15 THE COURT: Extricate himself.

16 MR. FAYSSOUX: Well, I guess he could've filed
17 a notice of dissolution.

18 But if we look at it like this, Your Honor, he
19 had -- if he had some ownership in the LLC or the
20 corporation, well, number one, the shares were
21 escrowed so he didn't have the shares yet, which
22 meant he had a right to have the shares if he had --
23 think about that.

24 If he -- if he had done certain things, build
25 the property, obtain financing, which it wasn't his

1 job, then maybe he could've earned those portions of
2 the shares that he would've been entitled to. But
3 he didn't do any of that. He wasn't part of that,
4 Your Honor.

5 And, quite frankly, if it was an asset, if
6 there was some value in it, if it was anything to
7 him being a part of that entity or corporation, he
8 would've given that up in the bankruptcy.

9 He had nothing to gain or nothing to benefit
10 from which is why he literally had nothing to do
11 with this hearing until -- or this case. You know,
12 from the appellate's standpoint at going forward,
13 he's not been a party. I mean, he's not even
14 participated in any of the testimony until we got
15 clawed back in. I firmly believe, Your Honor, you
16 should deny the motion.

17 THE COURT: Okay.

18 MR. LIGHTSEY: A couple of very brief points.
19 He was a party. He was represented by counsel. He
20 was a party to the appeal. Those findings in the
21 2014 orders were immediately appealable. They
22 could've appealed those. They didn't. Those are
23 now the law in the case, and so you don't have to
24 have another merits hearing on that. That's the law
25 of the case.

1 As far as the evidence that we presented in the
2 2013 hearing, to place that in context, that wasn't
3 just gratuitous evidence. You may recall there was
4 a legal issue that we discussed about what time
5 should the valuation be, should -- should the
6 valuation of the company be as of 2010? Should it
7 be as of the present?

8 And so we very deliberately consciously put in
9 evidence at that hearing that the conduct you found
10 to be oppression that continued up until that time,
11 so that that would support a -- a damages as of that
12 time, and I believe that is what the Court found in
13 determining the damages. So there was a reason for
14 that. It is in the record. It is a finding that
15 was made in 2014. That finding was not appealed,
16 and it's law of the case.

17 THE COURT: Okay. All right. Is that all the
18 motions?

19 MR. LIGHTSEY: It's Mr. -- Mr. Howard's motion.

20 THE COURT: It might be moot at this point,
21 but...

22 MR. HOWARD: I don't think it's moot. I think
23 that ---

24 THE COURT: No. Go ahead.

25 MR. HOWARD: Your Honor, we've moved that a

1 Rule 60(B)(5) motion for relief of judgment based
2 on the inequity of this prospective judgment
3 continuing at this point.

4 The basis of the debt -- the basis of it is
5 stated in Mr. Roberson's affidavit. We -- we rest
6 on the affidavit. We rest on the -- the -- the
7 evidence that's been in the record throughout this
8 about the -- as I stated earlier, about all the
9 evidence that Mr. Roberson has put into place to try
10 to make this happen, to try to bring this
11 development to bear.

12 It has not happened. It was unilaterally
13 removed by Duke Energy. And based off of Duke
14 Energy's actions and unilaterally taking away the
15 lease, it's left the corporation of Warpath
16 Development asset-less at this point.

17 The lease was the most significant asset of the
18 company. It's the only -- it was the only quite --
19 it was the only thing that gave right to development
20 of the land and -- and now it's gone.

21 So based off of Rule 60(B)(5), there's not a
22 lot of case law in South Carolina on it. There's a
23 fairly large amount of case law in the -- in Federal
24 courts on Rule 60(B)(5). It's the exact same as
25 the -- as the Federal rules of civil procedure.

1 And based on that, the circumstances are that
2 that the -- your factors that you must consider in
3 ruling on this motion is a change in the relevant
4 circumstances or conditions and hardship on the
5 movement.

6 I would suggest -- we would suggest that
7 there's certainly been a change in the relevant
8 conditions. The lease doesn't exist. The company
9 can't exist. Whatever they're buying now at this
10 point has no assets. It's -- it's worthless at this
11 point and is not based off of -- I'm not attributing
12 to anybody necessarily.

13 It's -- it was -- it was not -- it was based --
14 all the best efforts were given. It just didn't
15 happen. And so, certainly, there's hardship on the
16 movement, on -- on -- on my client and Mr. Roberson
17 because whatever money he's contributing at this
18 point, they've said over and over and over, "This is
19 not a money judgment. You're going to get shares
20 back. It's not a money judgement." That's one of
21 the things that we took on appeal. And that's
22 what -- that's been their position the whole time.

23 Now, what we'd be receiving in return is a --
24 is worthless pieces of paper. And based off of the
25 actions that are simply not the actions of my client

1 or frankly anybody. It's just a -- it's a
2 circumstance. This isn't like a company that's
3 operating that gets -- that starts operating in the
4 negative.

5 This is -- this development, even despite
6 Mr. Ballard's own efforts to take the shares of this
7 company in settlement, to try to develop it, to
8 speak with Duke Energy on it, even despite all those
9 efforts on him, was unable to make that come to
10 fruition.

11 And so based on those -- based on the evidence,
12 based off of the evidence, based on the law, and
13 based on the equities involved, we would ask for
14 relief from this judgment. Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. LIGHTSEY: I don't know if you want to hear
17 argument or opposition on that or...

18 THE COURT: Go ahead.

19 MR. LIGHTSEY: I -- I'll -- I'll try to keep
20 it -- keep it brief, Your Honor.

21 We think there are three reasons the Court
22 should deny this motion. One is that Rule 60(B)(5)
23 does not apply to this type of judgment, and the law
24 there is very clear. It applies to perspective
25 judgements. The rule itself says the ground is --

1 is no longer equitable that the judgment -- judgment
2 should have perspective application.

3 Typically, where you see this is when you have
4 an injunction that requires ongoing monitoring
5 supervision by the Court of conditions or conduct
6 like reform of prison conditions or desegregation of
7 a school system, that kind of thing.

8 The South Carolina Court of Appeals has held
9 explicitly, a judgment of damages is not such a
10 judgment as is covered or contemplated in this
11 section. That's *Saro* -- *Saro Investments v. Ocean*
12 *Holiday Partnership*.

13 That's the case here. You remember one of
14 their arguments at the damages hearing and on appeal
15 was that you did not have the authority to enter a
16 money judgment against them individually, and they
17 lost on that. And that was affirmed on appeal. So
18 this is not the kind of judgment that this rule is
19 meant to apply to.

20 Now, it -- it is perspective in that when they
21 paid the money, they were going to get the stock
22 back from Mr. Ballard. The reason they haven't paid
23 the money is because -- is because they didn't
24 comply with your order. You gave them 90 days to
25 find an amount to buy Mr. Ballard out.

1 And that part of your judgment, that specific
2 part, was explicitly affirmed by the Court of
3 Appeals. If they had simply done what you had
4 ordered them to do, there would be nothing left of
5 this now. And so they shouldn't be able to come in
6 and say, "Since we did not comply with the order,
7 it's still perspective and we can invoke this rule."
8 I think that's a ridiculous argument.

9 Even if the rule did apply, there's a very
10 heavy burden that everyone has to face under this
11 rule because it undercuts the public policy in favor
12 of the finality of judgements.

13 The courts have said, "To get relief under this
14 rule, the movement has to submit close to an
15 unanswerable case." That's an actual quote, close
16 to an unanswerable case. A party cannot invoke this
17 rule when he himself was the cause of a change of
18 circumstances.

19 And that is the case here. The termination
20 notice clearly says the reason the lease was
21 terminated was because for nine years there was no
22 development of the property. That was the
23 defendants' responsibility. That was Mr. Roberson's
24 responsibility.

25 He had the money in 2007 and 2008 to finance

1 the development of this property. He just didn't
2 like the economics when Duke said no to the 200 boat
3 slips. And so instead of just going ahead and doing
4 what he had contractually obligated himself to do,
5 he tried to change the economics by forcing
6 Mr. Ballard out and without the stock of him wiping
7 out the value of his investment.

8 So it would be completely wrong and inequitable
9 to let him off the hook now when his own wrongful
10 conduct resulted in the termination of the lease.

11 Also, Your Honor, I do want to point out, there
12 have been numerous efforts to settle this case over
13 the years. Early on in the case, back when Frank
14 Holleman was still representing Mr. Ballard, there
15 was an offer of, you know, either -- either pay him
16 a reasonable price for his stock or let him take it
17 back, let him take control of his own company back,
18 that for either or. And they did neither. They
19 didn't -- they didn't do either one.

20 I don't think there's any question that if
21 Mr. Ballard had been allowed to resume control of
22 the company back in 2008, he would've gotten this
23 thing developed. We would not be here today.

24 It was the defendants' wrongful conduct, their
25 breach of contract, their dragging things out for

1 nine years while not proceeding with the development
2 that resulted in the termination.

3 Finally, after beating them up for six years in
4 2014, they agreed to a settlement that -- that would
5 allow Mr. Ballard to take control once we did some
6 due diligence and determined that that was feasible.

7 So he and I met and met with Duke Power in
8 September of 2014. I will represent to you as an
9 officer of the court, I was at that meeting. At
10 that time, you could tell they were fed up with
11 Mr. Roberson and the Thoennes'. They were very
12 frustrated that nothing had happened with this
13 property. And so we said, "Well, we -- we're going
14 to need about five years to get this done."

15 And what they did was, they sent a letter back
16 to us and said, "If you go through all the hoops
17 that you jumped through in order to get this lease
18 in the first place and you do all those things and
19 you get all the consents from all these other
20 interested parties, then we may give you the time to
21 do this, but that's in our sole discretion."

22 And at that point, what we would've had to do
23 to do that, was to give up the judgment against the
24 company which is worth at that time about 4 million.
25 Mr. Ballard was looking at coming out of pocket

1 about half a million of his own money, getting
2 investors to come in. That was just too uncertain
3 for us saying, "If you do all this stuff, maybe in
4 our discretion, we'll give you the time needed to do
5 this development." So we backed out. This thing
6 went forward.

7 About a year ago, we were again seeing if we
8 could settle things with Mr. Roberson at that time.
9 You heard a lot about, "Oh, poor me." You know, "I
10 don't have enough money for living expenses." We
11 offered him a deal that would give him some of this
12 money from TRG to help him meet his living expenses.
13 They turned it down.

14 So they had -- they've had the key to their --
15 their lock. They've had the ability to get out of
16 this and have not availed it.

17 The rule requires that a motion under Rule
18 60(B)(5), that it be filed within a reasonable time.
19 They got notice -- or Mr. Roberson got notice in
20 January, on January 4th of last year, that Duke was
21 going to terminate the lease.

22 They didn't tell us. They didn't file their
23 motion. They waited a year to file this motion
24 because they wanted to see what the Supreme Court
25 was going to do, if it was going to take it.

1 That's gamesmanship. That's playing games with
2 the court. It's playing games with you. If they
3 felt that they had the right to seek relief under
4 this rule, they should've brought it in a more
5 timely manner.

6 Instead of bringing it, instead of telling us
7 what was going on, in fact, in connection with our
8 discussions then -- and I'll hand these up to the
9 Court and to counsel.

10 In December, Mr. Howard sent an e-mail to Bill
11 Wilson saying, "Tim has been out of town. I know
12 he's expecting a thumbs up from Duke."

13 And then on January 14th, ten days after the
14 notice that -- that Duke was going to terminate,
15 Mr. Howard sends Mr. Wilson an e-mail saying, "Still
16 waiting on some information from Duke, but things
17 are moving along."

18 So not only were we not told that Duke had
19 given notice that it was going to terminate, when we
20 might've been able to come in and see if we could do
21 something. I don't know what we could've at that
22 time, but we might've been able to come in and --
23 and -- and get some additional time for this. That
24 was in our interest.

25 Instead of telling us that, they were saying,

1 "Oh, things are moving along. Mr. Roberson's
2 expecting a thumbs up."

3 Instead of doing that, what they should've
4 done, they waited for a year to file this motion and
5 didn't provide the information to us at the time
6 when it might've made a difference. I think it's
7 outrageous for them to say now it's inequitable
8 to -- to apply this judgment because it's been
9 terminated because of their own -- their own
10 conduct. Again, Your Honor, I'll hand these up.

11 THE COURT: That's all right. You've
12 represented it to me. Do y'all want to look at
13 them?

14 MR. LIGHTSEY: You know, I just say, as I said
15 at the beginning, it's time to pay the piper. It's
16 time to come to an end, especially with
17 Mr. Roberson.

18 You know, they've got -- they've got judgments
19 against them from other people as well. They've
20 gotten very adept at -- at fending off predators by
21 just stringing things out, protracting the
22 proceedings, you know, taking every opportunity to
23 cause further delay. And that's what they've been
24 doing here and they've been doing it for nine years.
25 That's enough time. It's time to end this.

1 THE COURT: Okay. All right. Well, I'm -- I
2 am going deny your motion.

3 Can I talk to the lawyers up here for one
4 second?

5 (A discussion between the Court and counsel was
6 held off the record.)

7 THE COURT: Okay. With respect to the issue
8 raised by Mr. Fayssoux, I'm taking that under
9 advisement. I'm going to read through all this --
10 these documents.

11 And with respect to the other motions, I would
12 request that plaintiff's counsel prepare a proposed
13 order to either -- and can either do it with respect
14 to each individual motion or all in one, whatever
15 you prefer, and share it with opposing counsel
16 before I see it. Make sure that they are -- not
17 happy with the result, but at least with the
18 language contained in the orders.

19 All right. Thank you very much.

20 (The proceedings concluded at 12:22 p.m.)

21 - - -

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

I, the undersigned, Lisa Scott, Circuit Court
Reporter for the Thirteenth Judicial Circuit of the
State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete
transcript of record of all the proceedings had and
the evidence introduced in the hearing of the
captioned cause, relative to appeal in the Circuit
Court for Greenville County, South Carolina, on the
27th day of January, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

June 19, 2017

/s/Lisa Scott



Lisa Scott
Circuit Court Reporter

COUNTY OF GREENVILLE)
STATE OF SOUTH CAROLINA)
_____)

AFFIDAVIT OF TIM ROBERSON

Tim Roberson, being duly sworn, states as follows:

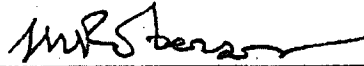
1. My name is Tim Roberson. I am over the age of eighteen and competent to make this Affidavit from my own personal knowledge.
2. I am President of Warpath Development, Inc. ("Warpath") and have served in that role since 2008. In addition to myself, Warpath's shareholders are Andy Ballard, Rick Thoennes, Sr. and Rick Thoennes, III.
3. From 2007 to present, I have made a continuous and well documented effort to fund and develop the marina proposed by Warpath. One of the efforts was to offer the shares of myself, Rick Thoennes, Sr. and Rick Thoennes, III to Andy Ballard in exchange for a release and satisfaction. Such an agreement was reached on August 8, 2014.
4. Following the agreement, Mr. Ballard was permitted a period of time to discuss a development plan with Duke Energy.
5. Following those discussions between Mr. Ballard and Duke Energy, the result was the September 30, 2014 letter from John Crutchfield to Wallace Lightsey attached here as Exhibit A.
6. Based on the representations in the letter, it appears that Mr. Ballard met with Duke Energy on September 3, 2014 and follow-up communication was provided on September 9, 2014.
7. I was not involved with the discussions between Mr. Ballard and Duke Energy, however Exhibit A sets forth conditions upon which the Duke Energy was willing to work with Mr. Ballard on the development.



8. For reasons known only to Mr. Ballard, he thereafter declined to move forward with Duke Energy and terminated the August 8, 2014 Agreement between he, myself and Rick Thoennes, Sr. and Rick Thoennes, III.
9. Prior to Mr. Ballard's involvement, I and Warpath had a productive and positive relationship with Duke Energy.
10. The entire relationship between myself and Duke Energy changed after Mr. Ballard's meetings and communications with John Crutchfield and the Duke Energy team.
11. For example, prior to Mr. Ballard's meetings and communications, Duke Energy was a willing and understanding partner. Following Mr. Ballard's rejection of the terms of development proposed by Duke Energy, I was asked to enter into an agreement to terminate the lease. Such a discussion had never been undertaken by Duke Energy prior.
12. Ultimately, following Mr. Ballard's termination of the August 8 agreement, I reengaged in my efforts to fund and develop Warpath.
13. In 2015, I was able to engage with a new financial and development partner on behalf of Warpath. Given that Mr. Ballard's cooperation was necessary, Mr. Ballard and his counsel were notified of the developments. Simultaneous to these discussions, I engaged in discussions with Duke Energy, provided a development plan in December 2015, sought and/or received the approval of necessary community and governmental partners (which had been previously received in full), started the process of renewing and/or reacquiring all necessary lapsed permits and entered into agreements to reacquire property necessary for wastewater treatment.

14. Unfortunately, due to the changed relationship with Duke Energy following Mr. Ballard's meetings and communications, Duke Energy was unwilling to participate in the development plans.
15. On January 4, 2016, Warpath received a notice of lease default with a 60 period to cure.
16. Despite objections and best efforts to reengage Duke Energy, Duke Energy issued a termination of the lease effective March 4, 2016.
17. In follow-up, I attempted further communications with Duke Energy, however those have been unsuccessful.
18. Beginning with Mr. Ballard's discussions in 2014 and outright rejection of Duke Energy's plan to move forward with Mr. Ballard and his development partners, the entire relationship between Warpath and Duke Energy fundamentally changed. Duke Energy shifted from cooperative partner to an arm's length lessor.
19. This breakdown in the relationship caused significant harm to Warpath and, despite my best efforts to repair the damage ultimately resulted in Duke Energy's termination of lease.
20. At this point, despite best efforts, I see no path forward for Warpath. Warpath has no assets and the shares are worthless.
21. At no point since 2007 has Warpath ever been developed or operational. Warpath has not generated any revenue for me, Rick Thoennes or Rick Thoennes, III in its years of existence. I have personally contributed over \$1,700,000 (\$1,000,000 of which went to Mr. Ballard) to Warpath that I will never recover. This does not include the countless, uncompensated hours contributed by myself, Rick Thoennes and Rick Thoennes, III to the development efforts.

FURTHER AFFIANT SAYETH NOT.

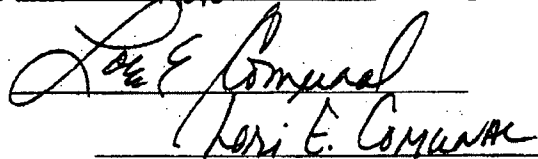


Tim Roberson

January 12, 2017

STATE OF SOUTH CAROLINA) SOUTH CAROLINA
COUNTY OF PICKENS SC) OCONEE

The foregoing instrument was sworn to and subscribed before me this 12th day of JANUARY, 2017, by TIM ROBESON, who is personally known to me.



Notary - Print Name

Notary Public - State of

My commission expires:

SC
My Commission Expires
August 15, 2021



**WATER STRATEGY, HYDRO LICENSING
AND LAKE SERVICES**

*Duke Energy Corporation
526 South Church Street
Charlotte, NC 28202*

*Mailing Address:
EC12Y/PO Box 1006
Charlotte, NC 28201-1006*

September 30, 2014

Mr. Wallace K. Lightsey
Wyche Attorneys at Law
44 East Camperdown Way
Greenville, SC 29601-3512

Subject: Warpath Access Area Development

Dear Mr. Lightsey:

Thank you for your letter dated September 9, 2014, providing the proposed revised schedule of Mr. Andy Ballard ("Mr. Ballard") and Warpath Development, Inc. ("Warpath"), to complete the planned recreation amenities at the Warpath Access Area (the "Development"). As you are aware, the FERC-approved Recreation Management Plan for the Keowee-Toxaway Project (FERC Project No. 2503) and the Public Access Area Lease Agreement, dated January 3, 2007, between Duke Energy Carolinas, LLC ("Duke Energy") and Warpath (the "Lease") require Warpath to complete construction of the Development by December 31, 2015 (the "Original Development Completion Date").

Mr. Ballard confirmed during our meeting of September 3, 2014, that Warpath will not complete construction of the Development by the Original Development Completion Date and stated the delay is due, in part, to a dispute among the members of Warpath. Mr. Ballard also provided Duke Energy with a copy of the Settlement Agreement, dated August 8, 2014, settling the dispute among the members of Warpath and giving Mr. Ballard the option to re-acquire 100% ownership of Warpath. Mr. Ballard asked Duke Energy to allow Warpath additional time to complete the Development, and Duke Energy asked Mr. Ballard to provide a revised schedule in writing for Duke Energy's consideration.

Duke Energy has significant concerns regarding Warpath's failure to perform as required under the Lease. Nonetheless, upon consideration of discussion during our September 3, 2014, meeting, the proposed revised schedule provided in your letter of September 9, 2014, and the discussion with several parties to the Keowee-Toxaway Hydro Project Relicensing Agreement ("Relicensing Agreement") on September 16, 2014, Duke Energy will consider extending the deadline to complete the permitting and construction of the Development if Warpath agrees to undertake the following actions to the satisfaction of Duke Energy, at its sole discretion:

1) Convene a joint meeting by November 14, 2014, of representatives from each signatory party to the Relicensing Agreement and each organization that is a member of the Recreation Resource Committee to discuss the revised Development construction schedule. Please see the enclosed listing of the organizations and their lead representatives that will need to be invited to the meeting. Please also make it clear meeting invitees may bring others to the meeting.



Obtain written concurrence by January 1, 2015, from each listed organization other than Duke Energy regarding the revised construction schedule for all proposed amenities and provide copies of all correspondence to Duke Energy.

In obtaining this written concurrence, each listed organization should be provided the revised construction schedule in writing either at or immediately following the joint meeting and each organization other than Duke Energy should be given at least 45 days to respond in writing. You should also inform each organization other than Duke Energy that if it fails to respond to your written request within said 45-day time period, then for the purposes of your request, you will assume their non-response indicates concurrence. See later in this letter for a description of how and when Duke Energy will respond.

2) Provide timely information to Duke Energy regarding discussions with Pickens County and Warpath creditors about the status of the Development;

3) Provide written confirmation identifying the financing party or parties and terms of financing, including copies of any and all written agreements related to financing for the Development, to Duke Energy by March 31, 2015;

4) Work with Duke Energy to execute an amendment to the Lease to incorporate the terms set out in this letter and to update Exhibit B, "Conceptual Plan for Warpath Landing" to include the Amended Construction Schedule (see below for definition) by August 1, 2015;

5) Obtain the necessary permits and regulatory approvals to begin construction of Phase I of the Development and provide Duke Energy with written confirmation of the same, by August 1, 2015;

6) Provide the firm detailed plan and schedule with milestone completion dates for each construction phase (Phases I-IV) of the Development to Duke Energy by September 1, 2015, with construction of Phase I beginning no later than September 1, 2015, and completion of all phases of construction of the Development by January 31, 2020 (the "Amended Construction Schedule") (Note this plan and schedule must include and be consistent with all proposed amenities under the Original Development Plan and with the schedule provided to the organizations in accordance with Item 1 above); and

7) Provide timely information needed to support Duke Energy's submittal of notification to the FERC of the schedule change.

Note that Duke Energy's signature on the Lease amendment, following the satisfactory completion of the proceeding steps, would be its approval of the revised construction schedule. Duke Energy will not provide approval of a revised construction schedule separate from the Lease amendment. Also, be advised the Lease reserves the right of the FERC to require specific actions, which could include additional schedule changes among other actions.

While Duke Energy is willing to amend the Lease to allow Warpath additional time to complete the Development, subject to the terms set forth herein, it cannot tolerate further delay by Warpath in performing its obligations under the Lease. Accordingly, Duke Energy intends to closely monitor the progress of the Development and will exercise its rights under the Lease, including, but not limited to, termination of the Lease, if Warpath fails to meet the milestone completion dates in the Amended Construction Schedule or fails to comply with any other term in the Lease and/or amendments thereto.

Also, please note Duke Energy will not be able to offer to extend the Lease as specified in Section 6.2.2.1 of the Relicensing Agreement because Development construction will not be completed as originally scheduled under the existing Recreation Management Plan and as stipulated in the Relicensing Agreement.

Please let us know at your earliest convenience whether Warpath and Mr. Ballard agree to the outlined conditions and whether Mr. Ballard intends to resume complete ownership and control of Warpath and move forward with the Development so we may begin the process of preparing the Lease amendment. Of course, if Warpath and Duke Energy do not enter into a Lease amendment extending the time for Warpath to complete construction of the Development, Duke Energy retains all of its rights and remedies under the Lease as currently written and signed, including, but not limited to, the right to terminate for Warpath's continuing nonperformance of its obligations under the Lease.

If you have any questions regarding the conditions outlined in this letter, please contact Ms. Karol Mack, Duke Energy Associate General Counsel, at 704-382-8165.

Sincerely,



John Crutchfield
Director
Public Safety & Recreation Strategy Planning Services

cc w/enclosure: Mr. Andy Ballard, Warpath Development, Inc.
Ms. Lauren B. Llamas, Esquire
Ms. Karol P. Mack, Esquire
Ms. Lee D. Williams, Esquire

Enclosure 1. Organizations to Invite to Joint Meeting

Organization	Designated Representative	Mailing Address	Overnight Express Address
Duke Energy Carolinas, LLC and Duke Energy Corporation	Jennifer R. Huff* Keowee-Toxaway Hydro Project Licensing Manager	Duke Energy PO Box 1006 Mail Code EC12Y Charlotte, NC 28201	Duke Energy 526 S. Church St Mail Code EC12Y Charlotte, NC 28202
Advocates for Quality Development, Inc.	Chuck Smith*	PO Box 802 Seneca, SC 29679	211 N Harbour Drive Seneca, SC 29672-6822
Anderson Area Chamber of Commerce	Howard D. Spencer	1719 Circle Road Powdersville, SC 29642	1719 Circle Road Powdersville, SC 29642
City of Seneca	Bob Faires	PO Box 4773 Seneca, SC 29679	225 E North 1 st Street Seneca, SC 29679
Friends of Lake Keowee Society, Inc.	Ben Turetzky* Executive Director	4065 Keowee School Road Seneca, SC 29672	4065 Keowee School Road Seneca, SC 29672
Greenville Water	David Bereskin	PO Box 687 Greenville, SC 29602	406 W. Broad Street Greenville, SC 29601
Oconee County, SC	Art Holbrooks*	415 S. Pine Street Walhalla, SC 29691	415 S. Pine Street Walhalla, SC 29691
Pickens County, SC	Chris Brink*	222 McDaniel Avenue, B-10 Pickens, SC 29671	222 McDaniel Avenue, B-10 Pickens, SC 29671

Organization	Designated Representative	Mailing Address	Overnight Express Address
Pickens County Water Authority	Steve Jewsbury	222 McDaniel Avenue, B-1 Pickens, SC 29671	222 McDaniel Avenue, B-1 Pickens, SC 29671
South Carolina Dept. of Archives and History	Elizabeth M. Johnson Director, Historical Services, D-SHPO	8301 Parklane Rd. Columbia, SC 29223	8301 Parklane Rd. Columbia, SC 29223
South Carolina Dept. of Natural Resources	Bill Marshall*	P.O. Box 167 Columbia, SC 29202	1000 Assembly Street Columbia, SC 29202
South Carolina Dept. of Parks, Recreation and Tourism	Phil Gaines*	1205 Pendleton Street Columbia, SC 29201	1205 Pendleton Street Columbia, SC 29201
South Carolina Wildlife Federation	Ben Gregg Executive Director	2711 Middleburg Dr, Ste 101 Columbia, SC 29204	2711 Middleburg Dr, Ste 101 Columbia, SC 29204
The Cliffs at Keowee Vineyards Community Association, Inc.	Jim Burgner	309 Wake Robin Drive Sunset, SC 29685-2247	309 Wake Robin Drive Sunset, SC 29685-2247
The Reserve at Lake Keowee	Tony Niemeyer*	100A Village Green Loop Sunset, SC 29685	100A Village Green Loop Sunset, SC 29685
Upstate Forever	Van Whitehead	507 Pettigru Street Greenville, SC 29601	507 Pettigru Street Greenville, SC 29601
Warpath Development, Inc.	Designated Representative*		
U.S. Fish & Wildlife Service	Mark Cantrell*	160 Zillicoa St. Asheville, NC 28801	160 Zillicoa St. Asheville, NC 28801

*Recreation Resource Committee Member

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Andrew P. (Andy) Ballard,
Plaintiff,

CASE NO.: 2008-CP-23-5739

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes, III and Warpath
Development, Inc.,

Defendants.

**AFFIDAVIT OF ANDY BALLARD IN
OPPOSITION TO ROBERSON MOTION
FOR RELIEF FROM JUDGMENT**

PERSONALLY appeared before me, Andrew P. Ballard, who, being duly sworn, deposes and says as follows:

1. My name is Andy Ballard. I am the Plaintiff in the above-entitled action. I submit this affidavit in opposition to the motion of Defendant Tim Roberson for relief from the judgment in this case, and to correct the grossly inaccurate and incomplete misrepresentation of facts in his affidavit.

2. Paragraph 3 of Mr. Roberson's affidavit refers to a settlement agreement that I entered into with him and Defendants Rick Thoennes and Rick Thoennes, III, in August of 2014. (Copy attached as Exhibit A) This agreement provided me with a 60-day period in which to conduct due diligence to determine if Duke Power would be willing to provide additional time for Warpath to develop the marina at the site leased from Duke Power, among other things needed to determine if it was practical and feasible for me to resume sole ownership of Warpath. This was a significant concern to me, as I expected that Duke Power had become frustrated over the failure of Warpath to even begin significant development work in the seven years that had elapsed since I obtained the lease agreement for Warpath with Duke Power. The reason that

seven years had passed and nothing had been done to develop the property is completely the fault of the Defendants, and particularly Tim Roberson, who for purely selfish purposes (a desire to improve the deal terms for himself) failed to carry out his obligation to obtain obtain long-term financing for the development.

3. The 2014 settlement agreement came about as a result of years of negotiating with the Defendants to either buy me out at a fair price or let me take Warpath back over and carry out the development myself. If Roberson and the other defendants had not dragged things out for seven years in their efforts to rob me of the value of my ownership interest in Warpath, I am convinced that I would have been able to maintain Duke Power's support for the project and to carry out the development of the marina.

4. However, because of the lengthy delays caused solely by the Defendants, when Mr. Lightsey and I met with Duke Power in early September, 2014, it was evident that the representatives of Duke Power attending the meeting were already fed up with Mr. Roberson and the other Defendants and skeptical of whether the project could be completed in a timely manner. This frustration is evident in Duke Power's letter to Mr. Lightsey dated September 30, 2014 (Exhibit C), in which Duke's John Crutchfield makes the following statements:

- a. "Duke Energy has significant concerns regarding Warpath's failure to perform as required under the Lease." (p.1)
- b. "Of course, if Warpath and Duke Energy do not enter into a Lease amendment extending the time for Warpath to complete construction of the Development, Duke Energy retains all of its rights and remedies under the Lease as currently written and signed including, but no limited to, the

right to terminate for Warpath's continuing nonperformance of its obligations under the Lease." (p.4)

5. Nevertheless, through Mr. Lightsey's letter to John Crutchfield dated September 9, 2014 (Exhibit B), we made a proposal to Duke Power for an extended period of time to begin and complete construction, and asked Duke Power to confirm for us that it would agree to the revised schedule so that I would have sufficient time to finish construction.

6. Mr. Crutchfield's letter of September 30, 2014 (Exhibit C) was Duke Power's response. In essence, Mr. Crutchfield said that Duke Power "will consider" extending the deadline to complete construction "if Warpath agrees to undertake the following actions to the satisfaction of Duke Energy, at its sole discretion." (p.1) Then the letter laid out a number of steps Warpath would have to undertake, which basically consisted of getting all of the consents and permissions that I spent years obtaining in order to get the lease agreement with Duke. In short, I was going to have to jump through all of the hoops again in order for Duke Power to even consider extending the construction deadline, and after all that work Duke Power still had total discretion to say no. Because I was going to have to relinquish my judgment against the Defendants (at that time worth about \$4 million), invest \$500,000 of my own money in the project, and persuade a group of investors to put substantial sums of money into the project, I was not willing to proceed under these conditions. By letter dated October 1, 2014, Mr. Lightsey informed Duke Power of my position and the reasons for it. (Exhibit D)

7. All of this correspondence was provided by Mr. Lightsey to the Defendants' attorney, Josh Howard. Thus, it is utterly false and disingenuous for Mr. Roberson to say in his affidavit that it was "for reasons known only to Mr. Ballard" that I declined to move forward with Duke Power.

8. It is also false and even ridiculous for Mr. Roberson to insinuate that my meeting with Duke Power led to a substantial worsening of its attitude towards Warpath. As I have noted above, it was quite evident during Mr. Lightsey's and my meeting with Duke in early September of 2014 that they were already very frustrated with Warpath's failure to move forward with development during the seven years since Duke signed the lease agreement with Warpath.

9. There is no question that the reason Duke Power eventually terminated the lease was the failure of Mr. Roberson and the other Defendants to make any significant progress with the development of the property. For Mr. Roberson to claim that this was "out of his control" is absurd. The sole reason for the termination of the lease is the Defendants' failure to develop the property as they contracted to do when I entered into my agreement with them to transfer a controlling ownership of Warpath to them.

10. If the Defendants had not persisted in stringing out this lawsuit for six years before entering into the settlement agreement with me in August 2014, I would have had the opportunity to work something out with Duke Power before it became so frustrated over the Defendants' failure to move the project forward over a period of seven years after the lease agreement was signed. Further, if the Defendants had simply done what they agreed to do in their initial contract with me, Duke Power would never have terminated the lease and the marina would now be a reality worth over \$30 million. The Defendants' efforts to rob me and failure to carry out their own agreements are what have ruined Warpath. For Roberson to ask the Court now to relieve him of the judgment, after he himself destroyed the company, is nothing short of amazing.

Further affiant sayeth not.

Andrew P. Ballard
Andrew P. Ballard

SWORN TO BEFORE ME
this 26th day of January, 2017
Samira J. Hamlett
Notary Public for South Carolina
My commission expires: 9/5/23

EXHIBIT A

Settlement Agreement and General Mutual Release

SETTLEMENT AGREEMENT AND GENERAL MUTUAL RELEASE

This Settlement Agreement and General Mutual Release ("Agreement") is made and entered into this 8th day of August, 2014, by and among Andrew P. Ballard ("Plaintiff"), Tim Roberson, Rick Thoennes, Rick Thoennes III, and Warpath Development, Inc., ("Defendants") (all of the foregoing, collectively referred to as "the Parties"), and Haynsworth Sinkler Boyd, P.A. ("HSB"), in regard to the dispute among the Parties and the lawsuit filed in the South Carolina Circuit Court of and for Greenville County, encaptioned *Andrew P. (Andy) Ballard vs. Tim Roberson, Rick Thoennes, Rick Thoennes III, and Warpath Development, Inc.*, Civil Action No. 2008-CP-23-5739 (the "Action").

The Parties, in consideration of the mutual covenants and undertakings set forth herein, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. RETURN OF WARPATH STOCK and RELATED TERMS

a. Due Diligence Period

- i. Upon the execution of this Agreement, Defendants shall turn over to Plaintiff all corporate and business records and intellectual property of Warpath Development, Inc. ("Warpath") in their possession and shall relinquish control of the Warpath website to Plaintiff, and the Parties shall direct the Receiver appointed in the Action to make available to Plaintiff all corporate and business records and intellectual property of Warpath in his possession.
- ii. Plaintiff shall have sixty (60) days from the full execution of this Agreement to conduct due diligence, to commence discussions with Duke Power Company, Pickens County, and creditors of Warpath, and to determine whether or not it is practical, feasible, and desirable to Plaintiff to resume complete ownership and control of Warpath. If any of the Defendants files a petition for relief in bankruptcy or receivership or if any involuntary petition in bankruptcy or receivership is filed against any of the Defendants during the Due Diligence Period, Plaintiff shall have an additional ten (10) business days from his receipt of written notice of such filing to assess the impact of such filing, notwithstanding that such additional time extends past the expiration of sixty (60) days from the execution of this Agreement; and in that event references herein to the "Due Diligence Period" shall include such additional time. Plaintiff will proceed with all deliberate speed in pursuit of his due diligence and shall keep counsel for Defendants regularly apprised of his efforts. Plaintiff agrees to evaluate the information obtained in due diligence in good faith and intends to go forward with the transactions contemplated below unless the due diligence uncovers any information concerning the status or affairs of Warpath that is materially different from Plaintiff's understanding of such based on information previously provided by Defendants

- iii. During the Due Diligence Period, Defendants shall not, individually or collectively:
 1. sell, convey, or encumber any shares of Warpath;
 2. pledge or place or permit any lien to be placed on such shares;
 3. take any action with respect to the business or affairs of Warpath, either individually or as officers or directors of Warpath, without the Plaintiff's express written consent;
 4. engage in any communication with any third party on any matter relating to the business or affairs of Warpath unless requested by Plaintiff, and shall promptly notify Plaintiff of any communication or process concerning Warpath.
- iv. During the Due Diligence Period, the Plaintiff shall suspend any further action with regard to collection of the Judgment entered in the Action; however, the Order Appointing Receiver and Charging Order shall remain in effect and all arrangements put in place by the Receiver shall remain in effect.
- v. Plaintiff agrees to conduct his due diligence with reasonable promptness and in good faith, and Defendants and HSB agree to cooperate in good faith with Plaintiff's efforts to conduct his due diligence. During the Due Diligence Period, the Parties agree to submit consent requests to the Bankruptcy Court to continue or delay any required response to the pending Motion To Reopen Bankruptcy Case No. 11-07438-hb ("Motion to Reopen") or hearing thereon as and when needed, and to cooperate with each other to request any other continuances of court action as may be necessary.
- vi. Prior to the expiration of the Due Diligence Period, Plaintiff shall have the option, in his sole discretion, to give written notice to the Defendants (through Defendants' counsel) that he wishes to proceed with the actions contemplated by this Agreement ("Notice of Intent To Proceed") or that he does not wish to proceed with the actions contemplated by this Agreement ("Notice of Intent Not To Proceed").
- b. If Plaintiff gives Notice of Intent Not To Proceed prior to the expiration of the Due Diligence Period, this Agreement shall become null and void.
- c. If Plaintiff gives Notice of Intent To Proceed or if he does not give Notice of Intent Not To Proceed by the expiration of the Due Diligence Period, the Parties shall then carry out and consent to the following actions as soon as reasonably practicable:
 - i. The individual Defendants shall execute and deliver to Plaintiff irrevocable proxies to vote all shares of stock held by those Defendants in Warpath, in the form attached hereto as Exhibit A.

- ii. The individual Defendants shall resign all positions held by them as officers and directors of Warpath, effective immediately. Plaintiff shall then hold a meeting of the board of directors of Warpath and elect himself President and Secretary of Warpath.
 - iii. Acting on behalf of Warpath as its President and sole director, Plaintiff shall cancel the individual Defendants' shares of Warpath stock held in escrow pursuant to the Circuit Court's Order of May 2010 in the Action by reason of the individual Defendants' failure to provide the consideration for such shares required by the Parties' Stock Purchase Agreement dated May 29, 2007 (the "SPA"). Any and all shares of any of the individual Defendants' Warpath stock that are not in escrow will be redeemed by Warpath in exchange for the consideration provided to such Defendant(s) in this Agreement.
 - iv. Upon the occurrence of the events set forth in section 1(c)(iii) above, the individual Defendants shall surrender to Warpath all shares of Warpath stock owned by any of them and the certificates therefor and relinquish all rights as shareholders of Warpath, and the SPA shall become null and void.
 - v. Within ten (10) days of the occurrence of the events set forth in sections 1(c)(i)-(iv) above, Plaintiff shall tender payment to HSB in the amount of Ten Thousand Dollars (\$10,000.00) in full satisfaction of any obligation that Warpath may have to HSB for payment attorneys' fees, litigation costs, or expenses incurred by HSB in connection with any representation of any of the Defendants. This payment may be made in whole or in part by Wyche P.A. on behalf of Plaintiff and Warpath.
 - vi. Upon the occurrence of the events set forth in section 1(c)(i)-(iv) above, the Plaintiff shall continue not to pursue any collection efforts against the Defendants, and the Parties shall instruct the Receiver to lift any restrictions on the Defendants' access to their property or funds.
- d. In connection with the foregoing and as a material part of this Agreement, the individual Defendants warrant, covenant, represent and agree as follows as of the date of the occurrence of the last of the events set forth in sections 1(c)(i)-(iv) above, and agree to indemnify Plaintiff and Warpath for any and all losses, damages, injury, costs and attorneys' fees incurred by Plaintiff or Warpath as a result of any breach of the following warranties:
- i. There are no shares of Warpath stock issued or outstanding other than the following:
 - Tim Roberson: 40,000 shares, 20,000 of which are in escrow;
 - Rick Thoennes: 20,000 shares, all of which are in escrow;
 - Rick Thoennes III: 20,000 shares, all of which are in escrow;
 - Andy Ballard: 20,000 shares.

- ii. The individual Defendants' shares of Warpath have not been assigned, transferred, conveyed or otherwise encumbered.
- iii. Upon the completion of the actions set forth in sections 1(c)(i)-(iv) above, Plaintiff will be the sole owner of all shares of Warpath stock, and no individual or entity has the right to acquire any shares of Warpath other than the rights set forth in this Agreement.
- iv. The individual Parties are the sole directors of Warpath, and upon the individual Defendants' resignation from such positions as directors of Warpath, Plaintiff shall then be the only director of Warpath and no other person shall have any right to assume a position as director of Warpath.
- v. There are no debts, payables, or obligations, matured or unmatured, of Warpath and no liens against its assets or any of the shares of Warpath other than as set forth in Exhibit B hereto.
- vi. Should the Internal Revenue Service, the South Carolina Department of Revenue, any other governmental or taxing authority, or any other creditor assert any lien against any shares or assets of Warpath as a result of such lien being held against any of the individual Defendants, the individual Defendant(s) against whom such lien is held shall promptly take all necessary action to pay and satisfy any such lien in full without cost to Warpath or Plaintiff.
- vii. Warpath has not undertaken any of the following actions during the Due Diligence Period:
 - 1. Disposition of any significant asset;
 - 2. Incurrence of any debt, liability or obligation;
 - 3. Granting or permitting any lien on any asset of Warpath;
 - 4. Initiation of any court proceeding, including without limitation any bankruptcy petition or similar process;
 - 5. Authorizing or making any distribution to any of its shareholders;
 - 6. Entering into, amending or terminating any agreement;
 - 7. Entering into any arrangement with any affiliated person or entity;
 - 8. Merger, consolidation, recapitalization or dissolution;
 - 9. Amendment of Warpath's articles of incorporation or bylaws;
 - 10. Issuance of stock;

11. Communication with any Warpath creditor or counterparty to any Warpath agreement.
- e. The foregoing indemnities shall be secured by a security interest in favor of the Plaintiff in Defendant Roberson's ownership, partnership, membership, and distributional interests in all business entities in which he is an owner, partner, or member and any proceeds from the sale of any such interest, including but not limited to the following:
- Sozo, LLC
 - Sozo7, LLC
 - Sozo Anguilla, Inc.
 - TRG, LLC
 - Greenville Gateway Developers, LLC
 - Kings Witness, LLC
 - Dayspring of South Carolina, LLC
 - Primus Source, LLC

To the extent necessary to enable this paragraph, Defendant Roberson assigns and grants a security interest in his ownership, partnership, membership, and distributional interests in all business entities in which he is an owner, partner, or member and agrees to the filing of financing statements with the appropriate authorities to perfect such security interest. To the extent Defendant Roberson has a certificate or certificates evidencing his ownership, partnership, membership, and distributional interests, he will deliver such certificate or certificates to Plaintiff so as to perfect such security interest, and will execute such documents as are reasonably necessary to effectuate the provisions of this section. Defendant Roberson represents and warrants that he has identified to Plaintiff all business entities in which he is an owner, partner, or member.

2. DISMISSAL OF ACTION and RELEASES

- a. Conditioned upon the expiration of ninety (90) days following Plaintiff's becoming the sole owner of all shares of Warpath stock as set forth in section 1(c) above and further conditioned upon none of the Defendants having filed a petition for relief in bankruptcy or receivership and upon no involuntary petition in bankruptcy or receivership having been filed against any of the Defendants during such ninety-day period, then:
- i. The Parties will submit a consent order to the court that (i) terminates the effect of the Rule to Show Cause and of the Charging Order, (ii) provides for any property of any of the Defendants held by the Receiver (other than certificates for shares of Warpath) to be returned to its owner, (iii) provides for the discharge of the Receiver, and (iv) dismisses the Action with prejudice.
 - ii. Plaintiff shall file a satisfaction of the Judgment entered in the Action; the Defendants will dismiss their appeal in the Action; the Plaintiff will withdraw

the Motion To Reopen the bankruptcy of Defendant Rick Thoennes, III; and all collection efforts of Plaintiff shall cease.

- iii. Plaintiff shall dismiss with prejudice any pending claims it has filed to foreclose on the Judgment.
- b. The following releases are granted effective and contingent upon the occurrence of the events in section 2(a) above:
 - i. Plaintiff, for himself and for his agents, principals, partners, employees, attorneys, insurers, executors, personal representatives, heirs, next of kin, administrators, successors and assigns, does hereby release, remit, acquit and forever discharge Defendants Tim Roberson, Rick Thoennes, and Rick Thoennes III and their respective current and former agents, principals, partners, employees, attorneys, insurers, executors, personal representatives, heirs, next of kin, administrators, successors and assigns from any and all claims, demands, debts, liabilities and causes of action, past, present or future, of any nature whether known or unknown, liquidated or unliquidated, whether legal or equitable in nature, which he has, could have had, or ever had, from the beginning of the world to the date of this Agreement (except for claims arising from the obligations and undertakings set forth in this Agreement), including, but not limited to, those arising out of or relating to all allegations, claims, and counterclaims that were or could have been raised in the Action, including any and all claims for damages, court sanctions, costs or attorneys fees, as well as all claims arising from any federal, state, or local law.
 - ii. The individual Defendants, for themselves and for their respective agents, principals, partners, employees, attorneys, insurers, executors, personal representatives, heirs, next of kin, administrators, successors and assigns, do hereby release, remit, acquit and forever discharge Plaintiff and Warpath and their respective current and former agents, principals, partners, owners, officers, directors, employees, attorneys, insurers, executors, personal representatives, heirs, next of kin, administrators, successors and assigns from any and all claims, demands, debts, liabilities and causes of action, past, present or future, of any nature whether known or unknown, liquidated or unliquidated, whether legal or equitable in nature, which they or any of them have, could have had, or ever had, from the beginning of the world to the date of this Agreement (except for claims arising from the obligations and undertakings set forth in this Agreement), including, but not limited to, those arising out of or relating to all allegations, claims, and counterclaims that were or could have been raised in the Action, including any and all claims for damages, court sanctions, costs or attorneys fees, as well as all claims arising from any federal, state, or local law.
 - iii. In addition to the foregoing, each of the individual Defendants specifically relinquishes any claim that he may have against Plaintiff or Warpath arising from or related in any way to the SPA or to the Defendant's ownership of

Warpath stock, whether any such claim has accrued heretofore or accrues in the future, including but not limited to any claim to any distribution of profit or return of capital or other property as provided in the SPA or otherwise.

- iv. Effective and contingent upon receipt of the \$10,000 payment specified above, HSB releases Warpath and Plaintiff from any claim for attorneys' fees, litigation costs, or expenses incurred by HSB in connection with any representation of any of the Defendants. HSB consents and agrees that Warpath shall have no further obligation to HSB once this payment of \$10,000 is received. The Parties and HSB recognize and agree that it is disputed whether HSB's fees and costs are a legitimate expense of Warpath, and that the payment provided for herein is made as a compromise in order to facilitate the resolution of the Parties' dispute.
- c. If any of the Defendants files a petition for relief in bankruptcy or receivership or if any involuntary petition in bankruptcy or receivership is filed against any of the Defendants before the expiration of the 90-day period referenced above, the Plaintiff shall have the option of resuming efforts to collect the Judgment entered in the Action, with the Action and Judgment remaining in full force and effect, and pursuing the Motion To Reopen.

3. GOOD FAITH COOPERATION

Unless and until this Agreement is terminated pursuant to its terms, the Parties and HSB agree to cooperate in good faith to carry out the terms and obligations of the Agreement and to refrain from any action that causes any other Party hereto to lose the benefit of the Agreement. At no time shall any Defendant or HSB participate in, encourage, or cooperate with any Warpath creditor with respect to initiating any form of insolvency proceeding against Warpath. The Parties shall cooperate with each other to resolve any tax or accounting issues that may arise in connection with the transfer of ownership of Warpath should that transfer take place pursuant to this Agreement.

4. COMPROMISE AND INTENTION OF PARTIES

It is expressly understood and agreed that the terms of this Agreement are contractual in nature and not merely recitals, and that the terms, conditions, and releases included in this Agreement are made and given in order to compromise and settle disputed claims. The execution or effectuation of this Agreement is not an admission of liability or of any of the allegations contained in any pleading, motion, discovery response or document filed or served on any party in the Action.

5. GOVERNING LAW, VENUE, AND ENFORCEMENT

The Parties and HSB understand and agree that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of South Carolina. Each of the Parties and HSB hereby agrees that this Agreement may be enforced by injunction and any action for breach of this Agreement shall be litigated exclusively in the state or federal courts in South Carolina. Each of the Parties and HSB hereby consents to the exercise of personal

jurisdiction over it in the state and federal courts of South Carolina in the event of such an action. If a proceeding is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

6. REPRESENTATION BY COUNSEL

Each party acknowledges that he or it has been represented in negotiations and in the preparation of this Agreement by counsel of his or its own choosing and that he or it has had this Agreement fully explained to him or it by counsel, and that he or it is fully aware of the contents and legal effect of this Agreement.

7. AUTHORIZATION

Each signatory hereto warrants and represents that he has the authority and is duly authorized to enter into this Agreement and to bind the party for whom that signatory acts.

8. NO ALIENATION OF CLAIMS

The Parties and HSB hereby warrant and represent that the claims, suits, rights, causes of action, and/or interests which are the subject matter of this Agreement are owned by the party asserting same and have not been assigned, transferred, conveyed or otherwise encumbered.

9. ENTIRE AGREEMENT

The Parties and HSB understand and agree that this Agreement supersedes all prior or contemporaneous agreements, understandings, representations, warranties, negotiations and discussions, whether oral or written, of the Parties or their agents or representatives. No supplementation, modification, or amendment of this Agreement shall be binding unless executed in writing by the Parties and HSB or their legal counsel.

10. SEVERABILITY

The Parties and HSB acknowledge and agree that if any portion of this Agreement should ever be determined to be unenforceable, it is agreed that such determination will not affect the enforceability of any other clause or the remainder of this Agreement. In the event that any portion of this Agreement should ever be determined to be unenforceable, the Agreement shall, to the extent possible, be interpreted and enforced in a manner that is most consistent with the letter and spirit of all of the terms of this Agreement as executed.

11. COUNTERPARTS

The Parties and HSB agree that this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Further, the Parties and HSB agree that a faxed or scanned version of signature by any Party upon receipt of the same by the other Parties, shall be deemed equivalent to an original for purposes of this Agreement.

12. NOTICES

Any notice required under this Agreement shall be deemed given when sent by U.S. Mail and by email as follows:

TO DEFENDANT(S) and HSB:

Joshua L. Howard, Esq.
Haynsworth Sinkler & Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602
jhoward@hsblawfirm.com

TO PLAINTIFF:

Wallace K. Lightsey
Wyche P.A.
44 E. Camperdown Way
Greenville, SC 29601
wlightsey@wyche.com

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the date first above written.

THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE AGREEMENT. ITS CONTENTS HAVE BEEN FULLY EXPLAINED TO THEM BY THEIR ATTORNEYS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT, AND TO SIGN THIS AGREEMENT, ARE CONTAINED IN THIS AGREEMENT. THE SIGNATORIES ARE SIGNING THIS AGREEMENT VOLUNTARILY.

In the presence of:

Susan M. Minor
Sandra G. Stachler

Andrew P. Ballard

Andrew P. Ballard

Tim Roberson

Haynsworth Sinkler & Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602
jhoward@hsblawfirm.com

TO PLAINTIFF:

Wallace K. Lightsey
Wyche P.A.
44 E. Camperdown Way
Greenville, SC 29601
wlightsey@wyche.com

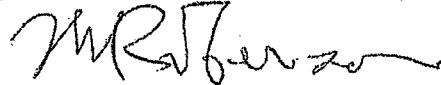
IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the date first above written.

THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE AGREEMENT. ITS CONTENTS HAVE BEEN FULLY EXPLAINED TO THEM BY THEIR ATTORNEYS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT, AND TO SIGN THIS AGREEMENT, ARE CONTAINED IN THIS AGREEMENT. THE SIGNATORIES ARE SIGNING THIS AGREEMENT VOLUNTARILY.

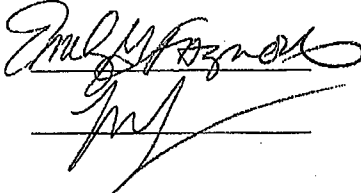
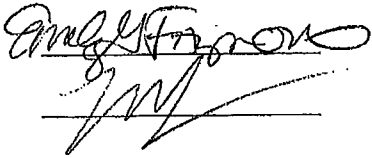
In the presence of:

Andrew P. Ballard

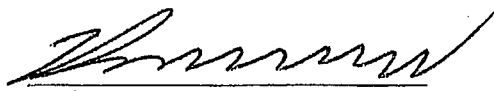
Tim Roberson



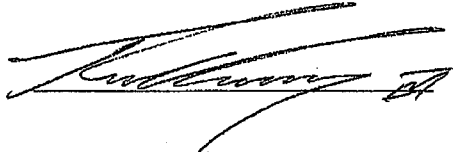
Rick Thoennes



Rick Thoennes



Rick Thoennes, III



Warpath Development, Inc.

By: _____
Its: _____

Haynsworth Sinkler Boyd, P.A.

By: _____
Its: _____

Rick Thoennes, III

Warpath Development, Inc.

By: Warpath Development, Inc.
Its: President

Haynsworth Sinkler Boyd, P.A.

By: _____
Its: _____

Rick Thoennes

Rick Thoennes, III

Warpath Development, Inc.

By:

Its:

Haynsworth Sinkler Boyd, P.A.

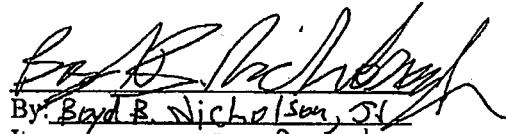

By: Boyd B. Nicholson, Jr.
Its: Managing Director

Exhibit A – Form of Proxy

PROXY

The undersigned owns shares of stock of Warpath Development, Inc. (the "Company"), and pursuant to the terms of the Settlement Agreement dated August __, 2014, to which the undersigned is a party, the undersigned, effective immediately, hereby appoints Andrew P. Ballard as the undersigned's proxy with respect to any action to be taken by the shareholders of the Company.

This Proxy is coupled with an interest and is irrevocable.

Dated: _____, 2014

Exhibit B – Schedule of Debts, Payables, Obligations and Liens

Goldie & Associates have incurred \$125.00 for the month of July 2014 for which we have not received an invoice.

Goldie is continuing to incur \$125.00 per month unless cancelled. That decision should be made by Ballard.

Warpath is also obligated for the "sewer" property that has been foreclosed on. Ballard has all details of that obligation. Warpath books indicate an obligation to Palmetto Bank for \$327,307.56. No interest has been booked. Lake Air Capital bought the loan from Palmetto and has foreclosed on this property and received deficiency judgments against Warpath, Rick Thoennes & Tim Roberson. Thoennes & Warpath must appear before a judge in Pickens on Sept. 4th (attached).

There is still a corporate account at Palmetto Bank that Michael O'Shea has control of. Reconciled balance as of 7/31/14 is \$23.48.

I am not privy to the amount of the taxes due (if any) on that "sewer" property from Pickens County.

All tax returns are current. There are 2 invoices shown for the annual corporate fees to South Carolina.

I am not aware of any fees due for any of the applications for development. Goldie would have to speak to that. At present I have no invoices outstanding for any of the applications.

Current balance sheet is attached.

I am aware of no liens with the exception of the "sewer" property.

The only continuing obligation that I am aware of is to Goldie & Associates for monthly inspection and report.

I am unaware of any continuing obligation for the web site. I believe it is shown on the accounts payable to David Garrison.

Phone service was disconnected several months ago.

Johnstone, Graydon & Thompson (CPA) were bought out by Scott & Co. and 2 invoices are shown on A/P.

Dixon Hughes Goodman invoices are attached and booked for the same amount. There is some question as to how much is still owed but Perry is out of town for an extended period of time.

11:24 AM
08/13/14

Warpath Development, Inc.
Unpaid Bills Detail
As of August 13, 2014

Type	Date	Num	Due Date	Aging	Open Balance
AT&T					
Bill	04/16/2013		04/26/2013	474	61.07
Total AT&T					61.07
David Garrison					
Bill	06/11/2014	Website	06/21/2014	53	38.00
Total David Garrison					38.00
Dixon Hughes Goodman LLP					
Bill	06/14/2013	00019...	06/24/2013	415	12,566.50
Bill	06/18/2014	excel	06/28/2014	46	1,189.75
Bill	08/13/2014	state...	08/23/2014		4,778.69
Total Dixon Hughes Goodman LLP					18,514.94
Duke Energy Carolinas, LLC					
Bill	01/01/2014	Ospre...	01/11/2014	214	21,000.00
Total Duke Energy Carolinas, LLC					21,000.00
Goldie & Associates					
Bill	01/01/2009	08-04...	01/01/2009	2050	9,829.14
Bill	01/09/2009	08-12...	01/09/2009	2042	847.63
Bill	01/09/2009	08-12...	01/09/2009	2042	5,428.80
Bill	01/09/2009	08-12...	01/09/2009	2042	818.75
Bill	01/12/2009	08-12...	01/12/2009	2039	3,831.25
Bill	01/13/2009	08-12...	01/13/2009	2038	265.00
Bill	01/13/2009	08-12...	01/13/2009	2038	6,302.50
Bill	03/06/2009	09-02...	03/06/2009	1986	2,414.46
Bill	03/06/2009	09-02...	03/06/2009	1986	872.50
Bill	03/06/2009	09-02...	03/06/2009	1986	5,948.96
Bill	03/06/2009	09-02...	03/06/2009	1986	3,316.59
Bill	05/01/2009	09-03...	05/01/2009	1930	380.00
Bill	05/01/2009	09-03...	05/01/2009	1930	1,000.00
Bill	05/01/2009	09-03...	05/01/2009	1930	7,727.76
Bill	05/04/2009	09-03...	05/04/2009	1927	1,073.75
Bill	05/07/2009	09-04...	05/07/2009	1924	2,958.99
Bill	05/08/2009	09-04...	05/08/2009	1923	1,920.00
Bill	05/11/2009	09-04...	05/11/2009	1920	4,814.33
Bill	05/11/2009	09-04...	05/11/2009	1920	6,947.16
Bill	10/23/2009	09-09...	10/23/2009	1755	4,877.65
Bill	10/28/2009	09-10...	10/28/2009	1750	800.00
Bill	11/05/2013	13-10...	11/05/2013	281	100.00
Bill	11/12/2013	13-10...	11/12/2013	274	25.00
Bill	12/05/2013	13-11...	12/05/2013	251	100.00
Bill	12/12/2013	13-11...	12/12/2013	244	25.00
Bill	12/13/2013	13-12...	12/13/2013	243	25.00
Bill	01/01/2014	09-05...	01/01/2014	224	630.00
Bill	01/01/2014	09-05...	01/01/2014	224	477.50
Bill	01/01/2014	09-05...	01/01/2014	224	1,188.75
Bill	01/01/2014	09-01...	01/01/2014	224	1,156.25
Bill	01/01/2014	09-01...	01/01/2014	224	1,692.86
Bill	01/01/2014	09-01...	01/01/2014	224	1,180.00
Bill	01/01/2014	09-01...	01/01/2014	224	1,415.00
Bill	01/01/2014	09-01...	01/01/2014	224	4,846.25
Bill	01/07/2014	13-12...	01/07/2014	218	100.00
Bill	02/04/2014	14-01...	02/04/2014	190	100.00
Bill	02/11/2014	14-01...	02/11/2014	183	25.00
Bill	03/05/2014	14-02...	03/05/2014	161	100.00
Bill	03/12/2014	14-02...	03/12/2014	154	25.00
Bill	04/07/2014	14-03...	04/07/2014	128	100.00
Bill	04/10/2014	14-03...	04/10/2014	125	25.00
Bill	05/08/2014	14-04...	05/08/2014	97	100.00
Bill	05/13/2014	14-04...	05/13/2014	92	25.00
Bill	06/05/2014	14-05...	06/05/2014	69	100.00
Bill	06/12/2014	14-05...	06/12/2014	62	25.00
Bill	06/17/2014	Interest	06/17/2014	57	134,035.10

ELECTRONICALLY FILED - 2017 Jan 26 11:48 AM - GREENVILLE - COMMON PLEAS - CASE#2008CP2306739 -

11:24 AM
08/13/14

Warpath Development, Inc.
Unpaid Bills Detail
As of August 13, 2014

Type	Date	Num	Due Date	Aging	Open Balance
Bill	08/30/2014	14-06...	06/30/2014	44	100.00
Bill	07/15/2014	14-06...	07/15/2014	29	25.00
Total Goldie & Associates					220,099.93
Haynsworth, Sinkler, Boyd, P.A.					
Bill	07/15/2009	14418...	07/25/2009	1845	19,645.14
Bill	09/23/2009	14509...	10/03/2009	1775	6,111.21
Bill	11/30/2009	Inv. #...	12/30/2009	1687	9,111.51
Bill	05/27/2010	Inv. #...	06/26/2010	1509	18,419.70
Bill	05/30/2012	15639...	06/29/2012	775	124,633.66
Bill	12/10/2012	15877...	01/09/2013	581	12,552.30
Bill	04/24/2014	16458...	05/24/2014	81	49,718.92
Bill	06/18/2014	61651...	07/18/2014	28	15,956.50
Total Haynsworth, Sinkler, Boyd, P.A.					256,148.94
Johnstone, Graydon & Thompson					
Bill	03/07/2013	tax ret...	03/17/2013	514	400.00
Total Johnstone, Graydon & Thompson					400.00
Robert M. Erwin, Jr.					
Bill	01/01/2010		01/11/2010	1675	2,787.55
Total Robert M. Erwin, Jr.					2,787.55
SC Department of Revenue					
General Journal	12/31/2013	2013 ...			622.00
Bill	03/15/2014		03/25/2014	141	628.00
Total SC Department of Revenue					1,250.00
Scott & Company					
Bill	05/30/2014	2013 t...	06/09/2014	65	400.00
Total Scott & Company					400.00
TOTAL					620,700.43

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DIXON HUGHES GOODMAN
Certified Public Accountants and Advisors

Haynsworth Sinkler Boyd, P.A.

Date Rec'd 8/12/14
C/M # _____
Routing _____
Calendared _____

Joshua L. Howard, Esquire
Haynsworth Sinkler Boyd
P.O. Box 2048
Greenville SC 29602

Statement Date: 8/6/2014
Client No: 1000099385
Page: 1

Invoice	Date	Description	Charge	Credit	Balance
000230904	09/10/2013	Invoice	2,339.50		2,339.50
000231908	09/17/2013	Invoice	13,973.23		13,973.23
FC	11/30/2013	Finance Charge	244.69		244.69
FC	12/31/2013	Finance Charge	244.69		244.69
FC	01/31/2014	Finance Charge	244.69		244.69
FC	02/28/2014	Finance Charge	244.69		244.69
FC	03/31/2014	Finance Charge	244.69		244.69
FC	04/30/2014	Finance Charge	244.69		244.69
FC	05/31/2014	Finance Charge	244.69		244.69
FC	06/30/2014	Finance Charge	244.69		244.69
FC	07/31/2014	Finance Charge	244.69		244.69

Balance \$ 18,514.94

0-30	31-60	61-90	Over 90	Balance
244.69	244.69	244.69	17,780.87	18,514.94

Praxity
MEMBER
GLOBAL ALLIANCE OF
INDEPENDENT FIRMS

We appreciate your business.
Thank you for your prompt payment.
Phone 843.722.8443

Please remit to:
PO Box 602828, Charlotte, NC 28260-2828
Credit card: <http://dhallo.com/clientpayments>
Electronic payment: ABA 021052053,
Account #60889089, Wells Fargo

EXHIBIT B

Lightsey letter to Crutchfield dated September 9, 2014

W Y C H E

Attorneys at Law

September 9, 2014

Via Email and U.S. Mail

John Crutchfield
Director, Public Safety & Recreation Strategy Services
Duke Energy
EC12K | 526 South Church Street
Charlotte, NC 28202

RE: Warpath Landing Development Project

Dear Mr. Crutchfield:

Speaking for both Andy Ballard and myself, I want to thank you for setting up the meeting last week in Charlotte and for taking the time to speak with us. I am writing this letter in response to your request that we provide you with a written description of how Andy anticipates proceeding with the Warpath project if he decides to go ahead with it. I believe that this is understood, but want to be very clear that this letter should not be viewed as a binding commitment by Andy or Warpath Development, Inc. ("Warpath"), but rather an outline of how he would expect the project to proceed and his present best estimate of the time needed to accomplish the major steps in the work.

By October 7, 2014. Andy must decide by this time whether or not to exercise his option under the Settlement Agreement with Roberson, Thoennes Sr., and Thoennes III to re-acquire 100% ownership of Warpath. As noted during our meeting, if Andy proceeds with the Warpath development project, this will require him to come out of pocket by at least \$500,000; he will also be releasing his judgment against the defendants, which is now (with accrued interest) at approximately \$4 million. Therefore, Andy will not go forward with the project unless (a) he feels that he has obtained a reliable commitment for the necessary funding to complete the project, and (b) he has received the assurance from Duke Energy that it will allow him sufficient time to finish construction. We know that the funding is an important ingredient in your decision as well, and therefore will inform you if and when Andy gets the funding commitment and will also be glad to respond to all reasonable requests for more information concerning the anticipated funding.

October 2014 – May 2015. The engineering firm of Goldie & Associates, which assisted Warpath with obtaining all of the initial permitting, estimates that it will take 8 months to reactivate the permits that have lapsed. During this time, Andy and his investment partners will be doing everything that can be done to prepare to commence construction of Phase I as soon as

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PROFESSIONAL ASSOCIATION

44 East Camperdown Way, Greenville, SC 29601-3512
p: 864.242.8200 | f: 864.235.8900
www.wyche.com

W Y C H E

John Crutchfield
 September 9, 2014
 Page 2

all necessary permits are reactivated – including selecting an architect, completing the detailed construction drawings for Phase I, selecting a contractor and negotiating the construction contracts, and developing a detailed project schedule. Creation of the programmatic and schematic designs for Phases II and III will be started during this time as well.

June 2015 – December 2016. Assuming that the necessary permits have been reactivated and construction can commence by June 2015, we estimate that construction of Phase I (as defined in the Conceptual Plan attached to the Lease Agreement) will take from 12 to 18 months. Completion of the detailed construction drawings for Phases II and III and creation of the programming and schematic design for Phase IV will be done during this time as well. Phase I includes the following elements:

- Dry boat storage;
- Fuel dock / courtesy dock;
- Marina grill and store;
- Boat slips;
- Roads and parking;
- Utilities infrastructure;
- Main entrance and gatehouse;
- Perimeter nature trail.

December 2015 – December 2016. Assuming that the necessary permits have been reactivated and construction can commence by June 2015, we estimate that construction of Phase II (as defined in the Conceptual Plan attached to the Lease Agreement) will take from 6 to 12 months, to be done concurrently with Phase I. Phase II includes the following elements:

- RV sites;
- Tent sites;
- Bath house;
- Picnic shelters;
- Courtesy boat docks;
- Swimming area;
- Overflow parking;
- Cabins;
- Fishing piers;
- Infrastructure.

January 2017 – January 2019. Assuming that the necessary permits have been reactivated and construction can commence by June 2015, we estimate that construction of Phase III (as defined in the Conceptual Plan attached to the Lease Agreement) will take from 18 to 24 months. Completion of the detailed construction drawings for Phase IV will be done during this time as well. Phase III includes the following elements:

- Resort lodge and conference center;
- Restaurant;

W Y C H E

John Crutchfield
September 9, 2014
Page 3

- Group cabins;
- Fishing pier;
- Boat dock;
- Parking and redefinition of entry road;
- Utilities infrastructure.

January 2019 – January 2020. Assuming that the necessary permits have been reactivated and construction can commence by June 2015, we estimate that construction of Phase IV (as defined in the Conceptual Plan attached to the Lease Agreement) will take from 6 to 12 months. Phase IV includes the following elements:

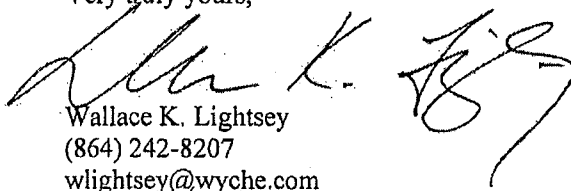
- Cabins;
- Courtesy boat docks;
- Secondary recreational opportunities.

While we anticipate that Phases III and IV will be done successively to the other work, it may be possible to accomplish a greater overlap among the Phases than indicated above in order to expedite the overall construction time. In general, however, we feel that three to five years is a reasonable estimate of the time needed to complete construction.

Please let us know if the above is sufficient for your purposes at this time, or if there is additional information you need from us. For our part, before Andy decides whether or not to go forward with this, he needs to know if Duke Energy will allow the time he needs to complete the project.

Thank you for your consideration of our position.

Very truly yours,


Wallace K. Lightsey
(864) 242-8207
wlightsey@wyche.com

cc (by email only):

Joseph W. Carriker, P.E.
Laruen Bowman Llamas, Esquire
Andrea Lee Davis Williams, Esquire
Andrew P. Ballard

EXHIBIT C

Duke Power's letter to Lightsey dated September 30, 2014



**WATER STRATEGY, HYDRO LICENSING
AND LAKE SERVICES**

*Duke Energy Corporation
526 South Church Street
Charlotte, NC 28202*

*Mailing Address:
EC12Y/PO Box 1006
Charlotte, NC 28201-1006*

September 30, 2014

Mr. Wallace K. Lightsey
Wyche Attorneys at Law
44 East Camperdown Way
Greenville, SC 29601-3512

Subject: Warpath Access Area Development

Dear Mr. Lightsey:

Thank you for your letter dated September 9, 2014, providing the proposed revised schedule of Mr. Andy Ballard ("Mr. Ballard") and Warpath Development, Inc. ("Warpath"), to complete the planned recreation amenities at the Warpath Access Area (the "Development"). As you are aware, the FERC-approved Recreation Management Plan for the Keowee-Toxaway Project (FERC Project No. 2503) and the Public Access Area Lease Agreement, dated January 3, 2007, between Duke Energy Carolinas, LLC ("Duke Energy") and Warpath (the "Lease") require Warpath to complete construction of the Development by December 31, 2015 (the "Original Development Completion Date").

Mr. Ballard confirmed during our meeting of September 3, 2014, that Warpath will not complete construction of the Development by the Original Development Completion Date and stated the delay is due, in part, to a dispute among the members of Warpath. Mr. Ballard also provided Duke Energy with a copy of the Settlement Agreement, dated August 8, 2014, settling the dispute among the members of Warpath and giving Mr. Ballard the option to re-acquire 100% ownership of Warpath. Mr. Ballard asked Duke Energy to allow Warpath additional time to complete the Development, and Duke Energy asked Mr. Ballard to provide a revised schedule in writing for Duke Energy's consideration.

Duke Energy has significant concerns regarding Warpath's failure to perform as required under the Lease. Nonetheless, upon consideration of discussion during our September 3, 2014, meeting, the proposed revised schedule provided in your letter of September 9, 2014, and the discussion with several parties to the Keowee-Toxaway Hydro Project Relicensing Agreement ("Relicensing Agreement") on September 16, 2014, Duke Energy will consider extending the deadline to complete the permitting and construction of the Development if Warpath agrees to undertake the following actions to the satisfaction of Duke Energy, at its sole discretion:

1) Convene a joint meeting by November 14, 2014, of representatives from each signatory party to the Relicensing Agreement and each organization that is a member of the Recreation Resource Committee to discuss the revised Development construction schedule. Please see the enclosed listing of the organizations and their lead representatives that will need to be invited to the meeting. Please also make it clear meeting invitees may bring others to the meeting.

Obtain written concurrence by January 1, 2015, from each listed organization other than Duke Energy regarding the revised construction schedule for all proposed amenities and provide copies of all correspondence to Duke Energy.

In obtaining this written concurrence, each listed organization should be provided the revised construction schedule in writing either at or immediately following the joint meeting and each organization other than Duke Energy should be given at least 45 days to respond in writing. You should also inform each organization other than Duke Energy that if it fails to respond to your written request within said 45-day time period, then for the purposes of your request, you will assume their non-response indicates concurrence. See later in this letter for a description of how and when Duke Energy will respond.

- 2) Provide timely information to Duke Energy regarding discussions with Pickens County and Warpath creditors about the status of the Development;
- 3) Provide written confirmation identifying the financing party or parties and terms of financing, including copies of any and all written agreements related to financing for the Development, to Duke Energy by March 31, 2015;
- 4) Work with Duke Energy to execute an amendment to the Lease to incorporate the terms set out in this letter and to update Exhibit B, "Conceptual Plan for Warpath Landing" to include the Amended Construction Schedule (see below for definition) by August 1, 2015;
- 5) Obtain the necessary permits and regulatory approvals to begin construction of Phase I of the Development and provide Duke Energy with written confirmation of the same, by August 1, 2015;
- 6) Provide the firm detailed plan and schedule with milestone completion dates for each construction phase (Phases I-IV) of the Development to Duke Energy by September 1, 2015, with construction of Phase I beginning no later than September 1, 2015, and completion of all phases of construction of the Development by January 31, 2020 (the "Amended Construction Schedule") (Note this plan and schedule must include and be consistent with all proposed amenities under the Original Development Plan and with the schedule provided to the organizations in accordance with Item 1 above); and
- 7) Provide timely information needed to support Duke Energy's submittal of notification to the FERC of the schedule change.

Note that Duke Energy's signature on the Lease amendment, following the satisfactory completion of the proceeding steps, would be its approval of the revised construction schedule. Duke Energy will not provide approval of a revised construction schedule separate from the Lease amendment. Also, be advised the Lease reserves the right of the FERC to require specific actions, which could include additional schedule changes among other actions.

While Duke Energy is willing to amend the Lease to allow Warpath additional time to complete the Development, subject to the terms set forth herein, it cannot tolerate further delay by Warpath in performing its obligations under the Lease. Accordingly, Duke Energy intends to closely monitor the progress of the Development and will exercise its rights under the Lease, including, but not limited to, termination of the Lease, if Warpath fails to meet the milestone completion dates in the Amended Construction Schedule or fails to comply with any other term in the Lease and/or amendments thereto.

Also, please note Duke Energy will not be able to offer to extend the Lease as specified in Section 6.2.2.1 of the Relicensing Agreement because Development construction will not be completed as originally scheduled under the existing Recreation Management Plan and as stipulated in the Relicensing Agreement.

Please let us know at your earliest convenience whether Warpath and Mr. Ballard agree to the outlined conditions and whether Mr. Ballard intends to resume complete ownership and control of Warpath and move forward with the Development so we may begin the process of preparing the Lease amendment. Of course, if Warpath and Duke Energy do not enter into a Lease amendment extending the time for Warpath to complete construction of the Development, Duke Energy retains all of its rights and remedies under the Lease as currently written and signed, including, but not limited to, the right to terminate for Warpath's continuing nonperformance of its obligations under the Lease.

If you have any questions regarding the conditions outlined in this letter, please contact Ms. Karol Mack, Duke Energy Associate General Counsel, at 704-382-8165.

Sincerely,



John Crutchfield
Director
Public Safety & Recreation Strategy Planning Services

cc w/enclosure: Mr. Andy Ballard, Warpath Development, Inc.
Ms. Lauren B. Llamas, Esquire
Ms. Karol P. Mack, Esquire
Ms. Lee D. Williams, Esquire

Enclosure 1. Organizations to Invite to Joint Meeting

Organization	Designated Representative	Mailing Address	Overnight Express Address
Duke Energy Carolinas, LLC and Duke Energy Corporation	Jennifer R. Huff* Keowee-Toxaway Hydro Project Licensing Manager	Duke Energy PO Box 1006 Mail Code EC12Y Charlotte, NC 28201	Duke Energy 526 S. Church St Mail Code EC12Y Charlotte, NC 28202
Advocates for Quality Development, Inc.	Chuck Smith*	PO Box 802 Seneca, SC 29679	211 N Harbour Drive Seneca, SC 29672-6822
Anderson Area Chamber of Commerce	Howard D. Spencer	1719 Circle Road Powdersville, SC 29642	1719 Circle Road Powdersville, SC 29642
City of Seneca	Bob Faires	PO Box 4773 Seneca, SC 29679	225 E North 1 st Street Seneca, SC 29679
Friends of Lake Keowee Society, Inc.	Ben Turetzky* Executive Director	4065 Keowee School Road Seneca, SC 29672	4065 Keowee School Road Seneca, SC 29672
Greenville Water	David Bereskin	PO Box 687 Greenville, SC 29602	406 W. Broad Street Greenville, SC 29601
Oconee County, SC	Art Holbrooks*	415 S. Pine Street Walhalla, SC 29691	415 S. Pine Street Walhalla, SC 29691
Pickens County, SC	Chris Brink*	222 McDaniel Avenue, B-10 Pickens, SC 29671	222 McDaniel Avenue, B-10 Pickens, SC 29671

Organization	Designated Representative	Mailing Address	Overnight Express Address
Pickens County Water Authority	Steve Jewsbury	222 McDaniel Avenue, B-1 Pickens, SC 29671	222 McDaniel Avenue, B-1 Pickens, SC 29671
South Carolina Dept. of Archives and History	Elizabeth M. Johnson Director, Historical Services, D-SHPO	8301 Parklane Rd. Columbia, SC 29223	8301 Parklane Rd. Columbia, SC 29223
South Carolina Dept. of Natural Resources	Bill Marshall*	P.O. Box 167 Columbia, SC 29202	1000 Assembly Street Columbia, SC 29202
South Carolina Dept. of Parks, Recreation and Tourism	Phil Gaines*	1205 Pendleton Street Columbia, SC 29201	1205 Pendleton Street Columbia, SC 29201
South Carolina Wildlife Federation	Ben Gregg Executive Director	2711 Middleburg Dr, Ste 101 Columbia, SC 29204	2711 Middleburg Dr, Ste 101 Columbia, SC 29204
The Cliffs at Keowee Vineyards Community Association, Inc.	Jim Burgner	309 Wake Robin Drive Sunset, SC 29685-2247	309 Wake Robin Drive Sunset, SC 29685-2247
The Reserve at Lake Keowee	Tony Niemeyer*	100A Village Green Loop Sunset, SC 29685	100A Village Green Loop Sunset, SC 29685
Upstate Forever	Van Whitehead	507 Pettigru Street Greenville, SC 29601	507 Pettigru Street Greenville, SC 29601
Warpath Development, Inc.	Designated Representative*		
U.S. Fish & Wildlife Service	Mark Cantrell*	160 Zillicoa St. Asheville, NC 28801	160 Zillicoa St. Asheville, NC 28801

*Recreation Resource Committee Member

EXHIBIT D

Lightsey letter to Duke Power dated October 1, 2014

W Y C H E

Attorneys at Law

October 1, 2014

Via Email and U.S. Mail

John Crutchfield
Director, Public Safety & Recreation Strategy Services
Duke Energy
EC12K | 526 South Church Street
Charlotte, NC 28202

RE: Warpath Landing Development Project

Dear Mr. Crutchfield:

Thank you for your letter of September 30. Mr. Ballard and I appreciate your taking the time to put together a proposal for going forward with Mr. Ballard in resumed control of Warpath Development, Inc. ("Warpath").

Unfortunately, the proposed terms are simply not acceptable. Given the financial risks entailed with Mr. Ballard's resumption of control of Warpath, and what he would be giving up by settling with the defendants in the pending litigation, it is unreasonable to expect him to agree to a structure that would, in effect, give each and every single Keowee Stakeholder a veto power over the Warpath project. Further, it is not reasonable to ask us to agree that, even if Mr. Ballard were to jump through all of the hoops set forth in your proposal, Duke Energy would still have the unfettered discretion to pull the plug.

More fundamentally, we do not agree with the basic premise of the proposal, that the RMP and the 2007 Lease Agreement "require Warpath to complete construction of the Development by December 31, 2015." In fact, there is nothing in either the RMP or the Lease Agreement that establishes such a deadline. The Lease Agreement simply states that construction will take place as set forth in the Conceptual Plan (Lease section 29(d)), and the Conceptual Plan does not have any deadlines or commencement dates, only estimated periods of time needed to complete the various phases. The December 2008 RMP - which the 2007 Lease Agreement predated - likewise states only that "[t]he approved conceptual plan provides for the phased construction to be completed within a three and one-half to five and one-half year timeframe," and does not state when those time periods are to commence. Section 4.7, p.51. While the August 2014 RMP states that the Warpath development must be completed by December 31, 2015, that statement was unilaterally inserted by Duke Energy and was not agreed to by Warpath. The Relicensing Agreement signed by Tim Roberson for Warpath in November 2013 (a fact of which we were unaware before you mentioned it in our meeting last month) provides that Duke Energy "will

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44 East Camperdown Way, Greenville, SC 29601-3512
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www.wyche.com

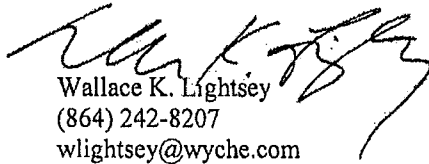
W Y C H E

John Crutchfield
October 1, 2014
Page 2

offer an extension of the Warpath Marina lease only if the facilities have been constructed consistent with the requirements of and schedule in the Existing License RMP." Section 6.2.2.1. The Existing License RMP is the 2008 RMP which, as noted above, does not set a date for commencement of construction or a deadline for completion of construction.

While we disagree with the legal premise of your position, nevertheless we recognize that it is neither prudent nor practical for us to go forward with the project under the cloud of a legal dispute with Duke Energy. We are not looking for more litigation – we simply want to do the project. If Duke Energy is unwilling to provide its assurance (contingent, of course, on Warpath's securing adequate funding and reactivating all necessary permits) that Mr. Ballard will have the time necessary to develop the property, there is no point in proceeding further.

Very truly yours,


Wallace K. Lightsey
(864) 242-8207
wlightsey@wyche.com

cc (by email only):

Joseph W. Carriker, P.E.
Laruen Bowman Llamas, Esquire
Andrea Lee Davis Williams, Esquire
Andrew P. Ballard

COUNTY OF GREENVILLE)
 STATE OF SOUTH CAROLINA)
 _____)

AFFIDAVIT OF TIM ROBERSON

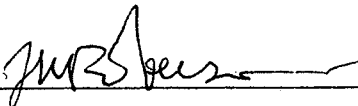
Tim Roberson, being duly sworn, states as follows:

1. My name is Tim Roberson. I am over the age of eighteen and competent to make this Affidavit from my own personal knowledge.
2. I am 72 years old and in general good health. I do require regular medical appointments to monitor overall health, but also to monitor my two mechanical heart valves.
3. I am married to Beverly Roberson. We reside together at our home in Seneca, SC.
4. Beverly has been in poor health for a number of years. At present, she has been in and out of the hospital three times since Christmas. She was recently readmitted and underwent major/emergency abdominal surgery. At this point, we are uncertain of when she may be in a position to leave the hospital. There is the potential that she may need an additional surgery within the next few days.
5. My only income sources are \$2,008.40 from Social Security and whatever amounts I am able to receive from LLC membership interests. I draw no salary. Beverly is presently unable to work.
6. My monthly family expenses since October 2016 have ranged from a low of \$6,270.63 for January 2017 to a high of \$10,791.20 for November 2016 depending on circumstances. Of that amount, fixed expenses are presently \$4,469.76 per month.
7. The only investments I have that distribute are:
 - a. TRG, LLC of which I own less than 50%. TRG owns an office building. Revenue is dependent on tenancy.

b. King's Witness, LLC, of which I own 60%. Kings Witness is an internet company that sells retail gift items. I take no salary from the company and work an average of 20 hours per week. I believe King's Witness had a net income of around \$15,000 in 2016.

8. In addition to the present judgment in this matter, I am indebted to the Internal Revenue Service ~~for an amount that exceeds \$400,000~~ *for an amount that exceeds \$400,000 JWR* ~~and I am unable to make a monthly payment that is included within my budget expenses.~~ I owe a significant amount in legal fees and have other outstanding judgments against me.

FURTHER AFFIANT SAYETH NOT.



Tim Roberson

January 26, 2017

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP

550 South Main Street
Suite 400
Greenville, SC 29601

Mailing Address:
Post Office Box 10208
Greenville, SC 29603
Telephone: (864) 255-5400
Fax: (864) 255-5440
www.wcsr.com

Joshua L. Howard
Direct Dial: (864) 255-5406
Direct Fax: (864) 239-5860
E-mail: jhoward@wcsr.com

January 27, 2017

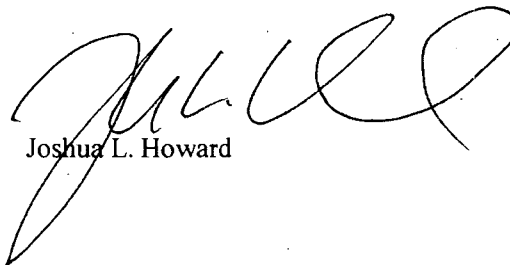
Paul B. Wickensimer
Greenville County Clerk of Court
305 E. North Street
Greenville, SC 29601

Re: Andrew Ballard v. Tim Roberson, et al.
2008-CP-23-05739

Dear Mr. Wickensimer:

Attached please find Mr. Roberson's Supplemental Exhibit to his Affidavit in Support of the Motion for Relief from the Court's Judgment Pursuant to Rule 60(b)(5) SCRCF.

Yours truly,



Joshua L. Howard

JLH/dps

Enclosure

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